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DEPARTMENT OF JUSTICE'S HANDLING OF THE JACKIE PRESSER GHOSTWORKERS CASE

HEARING

BEFORE THE

PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

MAY 9, 1986

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DEPARTMENT OF JUSTICE'S HANDLING OF THE JACKIE PRESSER GHOSTWORKERS CASE

FRIDAY, MAY 9, 1986

U.S. Senate,
Permanent Subcommittee on Investigations,
Committee on Governmental Affairs,
Washington, DC.

The subcommittee met at 9:13 a.m., in room SD-342, Dirksen Senate Office Building, under authority of Senate Resolution 353, section 13, dated March 13, 1986, Hon. William V. Roth, Jr., chairman of the subcommittee, presiding.

Members of the subcommittee present: Chairman William V. Roth, Jr., Republican, Delaware; Senator Warren B. Rudman, Republican, New Hampshire; Senator Sam Nunn, Democrat, Georgia; Senator John Glenn, Democrat, Ohio; and Senator Albert Gore, Jr., Democrat, Tennessee.

Members of the professional staff present: Daniel F. Rinzel, chief counsel to the majority; Eleanore J. Hill, chief counsel to the minority; Carla Martin, acting chief clerk; Katherine Dias, executive assistant to the minority chief counsel; Sallie Cribbs, executive assistant to the chief counsel; Mary Robertson, minority chief clerk; Leonard Willis, staff investigator to the minority; John Sopko, assistant counsel to the minority; Barbara Kammerman, deputy chief counsel; Howard Shapiro and Susan Lebeaux, staff counsel; Charlie Osolin, staff investigator; Paul Barbadoro, staff counsel; and Cindy Comstock and Connie Foster, staff secretaries.

[Senators present at the convening of the hearing: Senators Roth, Nunn, and Gore.]

OPENING STATEMENT OF CHAIRMAN ROTH

Chairman Roth. The subcommittee will please be in order. Today, the Permanent Subcommittee on Investigations is holding a hearing to review the handling of the Jackie Presser "ghostworkers" investigation by the Federal Government. This review is justified not only by the subcommittee's oversight powers, but also by our traditional interest in labor racketeering issues.

When this inquiry began last July at the direction of Senator Nunn and myself, the primary question to be answered was whether any political considerations influenced the decision of the Department of Justice to drop its proposed prosecution of Jackie Presser.

Despite the press speculation on that issue, no evidence supporting such speculation has been found. The evidence indicates that all the critical decisions in this case were made by career prosecutors in the Department of Justice and were approved by political appointees. There is no evidence of any attempt to improperly influence the decisions of the career prosecutors or the conduct of the investigators.

However, another set of concerns arose when it was learned that FBI agents in Cleveland had allegedly authorized the placement of ghostworkers on the union payroll and for this reason the Department of Justice was required to drop the case, as well as to dismiss two related convictions that the Department had already obtained.

Published reports in the Los Angeles Times and other media sources have recently asserted that the agents' authorization story may not be true, and indictments against one or more FBI agents for making false statements, as well as against Jackie Presser for the placement of ghostworkers on a union payroll, may soon be returned.

However, this possibility does not retrieve the considerable time and effort that has been wasted due to poor coordination between the Federal agencies involved in this case and a lack of adequate supervision by the Justice Department. I recognize that the degree of supervision exercised by the Justice Department over the FBI is, indeed, a sensitive question. No one wants the FBI to become politicized. But the Justice Department should certainly be able to obtain information from the FBI that directly affects its prosecutions.

It is also certainly true that the protection of confidential sources is vitally important to law enforcement and I, for one, have no desire to undermine the Government's informant programs. But the need for proper supervision and the need for safeguards in such programs is of legitimate concern to this subcommittee. Former Attorney General Levi, under a Republican administration, and former Attorney General Civiletti, under a Democratic administration, issued guidelines for dealing with informants and for authorization of what would otherwise be potential criminal conduct.

In light of the history of the *Presser* case, the question is whether those guidelines need, at the very least, some fine-tuning.

It is also certainly true that this is not the first time that we have heard of interagency rivalries and turf battles among law enforcement agencies, which effectively undermine the pursuit of a potentially significant prosecution.

These stories are, I am afraid, as old as the Republic. My staff tells me that in Cleveland the turf battles date back at least to the seventies. But our goal here is to determine what happened in this case and what the executive branch, particularly the Justice Department, proposes to do to prevent it from happening again in the future.

Frankly, this has been a difficult investigation, with significant roadblocks to gathering information. The potential existence of Government informants involved in the case precluded full disclosure from agency personnel and full access to agency files. The convening of a grand jury by the Department of Justice's Office of Professional Responsibility, which is certainly to be commended, heightened the sensitivity of the subcommittee's investigation, and the reluctance and outright refusal of the FBI to provide access to files and personnel created a serious problem for us.

I believe that we have conducted this important and necessary investigation in a highly responsible and nonpartisan manner. I want to publicly thank and express my appreciation to the ranking minority leader, Senator Nunn, who, as always, has handled himself in a very professional and careful manner.

I think each of us has consulted with the other and our staffs at every step of the way, and we were always willing to make reasonable modifications to our requests for information to satisfy legitimate law enforcement concerns.

However, I must confess my disappointment at the FBI's lack of cooperation during our investigation. There is no excuse for stonewalling a congressional committee which is entitled to information.

I am certain that Senator Nunn would agree that much more sensitive information is received by the Intelligence Committee, on which we both serve, than the information we sought to obtain in this case.

[At this point, Senator Rudman entered the hearing room.]

Chairman ROTH. The FBI's attitudes stand in marked contrast to that of other components of the Justice Department, the Labor Department, and other executive branch agencies which were generally very cooperative during the subcommittee's inquiry. We have not taken further action to obtain information from the FBI at this time because of the pending investigations and grand jury proceedings. We will continue monitoring this matter and determine at a later time what further action, if any, is necessary.

Because of the limitations on our investigation, we do not yet have a complete picture of what happened and what can be done to prevent it from happening again. But we do know enough to conclude that serious shortcomings existed in the nandling of this investigation and that similar shortcomings could not be allowed to occur again.

Senator Nunn.

OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. Thank you very much, Mr. Chairman. I concur in your remarks.

This morning, our subcommittee will report on the progress it has made in examining the Government's handling of the labor fraud investigation of Teamster president, Jackie Presser, an effort which you and I jointly announced in July 1985. At the time of that announcement, the media had just reported the closing of the 32-month investigation of Presser by the Justice Department in Washington. According to published reports at that time, that decision directly conflicted with the recommendations made by Federal prosecutors in Cleveland.

Those reports gave rise to widespread speculation that the case had been closed due to political influence, given Presser's very visible role as an adviser to the Reagan administration on labor issues.

Allegations of poor coordination and cooperation by the agencies involved in the *Presser* case also surfaced, underscoring the need for a fair and unbiased review of the handling of the case by this subcommittee. Of particular concern were reports that disputes between the Department of Labor and the Federal Bureau of Investigation in Cleveland had escalated to the point of obstruction in the Presser investigation.

Those types of allegations, when ignored or left unanswered by the Government, can only serve to erode the public's trust in the integrity of our criminal justice system, particularly in this area, where we have had so many problems for so long.

That is an especially serious consequence in a system such as ours, where public confidence and support is the bedrock foundation of our legal system. Concerned by growing speculation about the *Presser* case, Chairman Roth and I turned to the resources of this subcommittee to determine the accuracy of those very serious and far-reaching allegations. We directed the subcommittee staff, in a joint, bipartisan effort, to conduct a thorough and unbiased review of the Government's handling of the *Presser* case to give us the complete information and to let the chips fall where they may.

In the course of the last 8 months, the subcommittee staff has interviewed a wide variety of individuals, both inside and outside of Government. Moreover, the staff has reviewed thousands of pages of documents in an effort to accurately reconstruct the events leading to the closing of the *Presser* case in the summer of 1985.

To responsibly reconstruct the chronology of any criminal investigation is a very difficult task. It has proven all the more difficult in a case as visible, as sensitive, and as lengthy as the *Presser* case has proven to be. We have sought to review the activities of not one, but three different Government agencies over a period of time of nearly 3 years, and with varying degrees of cooperation from these agencies, as the chairman has already referred to.

On the question of cooperation, let me say that we began this investigation by seeking the cooperation and good faith support of those three agencies which appeared to be most involved in the handling of the *Presser* case: the Department of Labor, the Department of Justice, and the Federal Bureau of Investigation.

In response, let me say that cooperation at the Department of Labor has been good, with the subcommittee allowed access to all relevant Labor personnel and files with minimal restrictions. The Department of Justice has also made a reasonably good effort to cooperate, providing access to numerous strike force personnel and files. By contrast to Labor, however, the Justice Department has excised a far greater amount of material from those files.

Finally, the FBI has provided the subcommittee, and only after a very substantial delay and considerable effort by our staff and by the Senators involved, only one FBI file pertaining to this case, despite numerous requests for additional materials.

The FBI also provided, but again, only after even more protracted delays, a copy of the FBI informant guidelines to the subcommittee. Despite the willingness of the Justice and Labor Departments to provide their personnel for subcommittee interviews, the FBI has consistently refused access to its personnel. All of this at the same time we were reading in the newspapers numerous revelations that only could have come from sources that we were being refused access to.

Although Director Webster did meet with the chairman and myself on two occasions regarding this investigation, we have been unable to subsequently obtain from the FBI that degree of cooperation which is essential to the effective exercise of congressional oversight responsibility. This turn of events, I might add, stands in stark and unfortunate contrast to the FBI's past record of good cooperation with this subcommittee in numerous other investigations.

Our task has been further complicated by the fact that a Federal grand jury investigation was directed to review this same case subsequent to the beginning of the subcommittee's investigation. That grand jury inquiry and the possibility of criminal charges regarding the facts we have reviewed remains pending as we begin this morning's hearing, and I emphasize that has been a very complicating factor.

In this subcommittee's long history of oversight of criminal law enforcement activities, the effort has always been made to reasonably accommodate and protect the legitimate interests of law enforcement authorities in maintaining the confidentiality of pending criminal investigations. Let me emphasize, we have no intention of breaking with that tradition in this morning's hearing.

In reviewing the *Presser* case, we have made every effort to proceed carefully and responsibly, recognizing the need not to intervene in any way with the pending grand jury investigation or any resulting future proceedings in the criminal justice system.

We believe, however, that separate and apart from the grand jury investigation, the *Presser* case raises serious questions on the effectiveness of Federal law enforcement which clearly and necessarily fall within the legitimate scope of congressional oversight responsibility.

I am concerned, this morning, with whether we have the kind of coordination and cooperation between our Federal agencies that is absolutely essential to effective law enforcement in this overall area.

We are not here this morning to make judgments on substantive evidentiary disputes which may or may not remain at issue in the pending grand jury investigations. That remains the job of the courts rather than the Congress.

Our aim, rather, is to review this case for whatever lessons it may teach in terms of improving the Federal law enforcement effort against labor racketeering. There are two questions which we intended to address in this investigation: first, whether political or undue influence colored the prosecutorial decisionmaking process in the Presser investigation; and second, was there a lack of cooperation and coordination between the Federal agencies involved in that investigation.

It is my understanding—and we will hear from the staff themselves this morning—but it is my understanding, based on the staff's review, that the answer to the first question is no, and the answer to the second question is yes. We will hear the details of those findings in the staff testimony this morning.

I might add that this is not the first time that this subcommittee has conducted oversight hearings on the Government's ability to effectively combat labor racketeering. This subcommittee has long been a most vocal proponent of a diligent and expanded effort for the enforcement of Federal labor laws.

We have examined Government efforts to combat labor racketeering in a number of areas: the reform of the once scandal-plagued Teamsters Central States Pension Fund; the corruption of union officials in the waterfront industries; and the alleged influence of organized crime in the Hotel Employees and Restaurant Employees International Union, to name but a few of our investigations.

Significant reform of the Federal labor laws has, in the past, resulted from the work of this subcommittee, including the passage of the Landrum-Griffin Act of 1959, before I came to the Senate and before our present membership was here, and the Labor-Management Racketeering Act in 1984, which I believe was the most sweeping reform we have had since the Landrum-Griffin Act, and that came directly out of this subcommittee.

Finally, the very creation of the Labor Department office, which pursued the Presser investigation, the Organized Crime and Racketeering Section, was promoted by the work of this subcommittee. Beyond the *Presser* case, let me note one of my principal concerns here today. After years of trying to get the Labor Department to do its job in this overall area of labor racketeering, after many frustrations and after many hearings which really criticized the Labor Department for what we felt was lack of due diligence, we passed clear and explicit authority for the Labor Department to get in this area; we mandated not just once, but twice that they would get into it. Lo and behold, we now find that the very people who were complaining about the lack of labor help back 5, 6, 7 years ago, lo and behold, it seems that they are now doing what they can to stifle the Labor Department and to prevent them from being effective in law enforcement. That is far more important than the *Presser* case this morning.

I want to emphasize that. In short, this subcommittee and its members are no strangers to the problem of labor racketeering and the very serious threat which it poses to honest, hard-working rank and file union members.

[At this point, Senator Glenn entered the hearing room.]

Senator NUNN. Hearings before this subcommittee have demonstrated, time and time again, the need to devote the very best efforts of our combined Federal law enforcement agencies to assist the labor movement in its fight against organized crime and labor racketeering. There is no room in this fight for interagency rivalry, misinformation, and poor coordination. I am hopeful that whatever problems we may find in the handling of the Presser investigation will serve as useful and constructive lessons to those who bear the responsibility for effectively enforcing the Federal labor laws.

Mr. Chairman, I also want to thank you for your excellent support, leadership, and cooperation in working together on this investigation. I know that you share my belief in the importance of effectively coordinated law enforcement activity in the labor racketeering area. We have stood together in this investigation. It has not been conducted by Democratic staff or Republican staff or Democratic Senators or Republican Senators. We have conducted it in an objective and very bipartisan way, and that is the only way that we can maintain the kind of objectivity that is so crucial in this area.

Mr. Chairman, I thank you for your leadership, and I look forward to the hearing this morning.

Chairman ROTH. Thank you, Senator Nunn.

Senator Rudman, do you care to make a comment?

OPENING STATEMENT OF SENATOR RUDMAN

Senator RUDMAN. Mr. Chairman, I just want to very briefly say that I commend the chairman and ranking member for what the committee has done here. I find it a supreme irony, as does the chairman and the ranking member, that after years of hearings and attempts to bring these law enforcement agencies together within the executive branch, that what Senator Nunn referred to appears to have happened in this case; that the very kinds of things that we have tried to assist them in doing, once having put them on the statute books, they now obstruct. I say that is probably, as Senator Nunn has said, more important than the facts of this particular case and, quite frankly, has very serious implications for what we do in organized crime investigations and in investigations of other kinds.

So I look forward to the witnesses' testimony.

Chairman ROTH. Thank you.

Senator Gore.

OPENING STATEMENT OF SENATOR GORE

Senator GORE. I have a short statement, Mr. Chairman, thank you.

I want to commend you and Senator Nunn for having this important hearing. The interest and leadership that both of you have provided serves to focus attention on the complex issues involved here.

After examining the background information on this investigation I, too, have some serious concerns about the coordination and cooperation among the Department of Justice, Federal Bureau of Investigation and the Department of Labor. It would appear that they are more concerned with protecting their jurisdiction than in fighting organized crime.

The ongoing grand jury probes into the allegations that the FBI attempted to obstruct the Department of Labor's investigation into the illegal use of ghostworkers by unions should resolve this incident. However, the broader issue of the general lack of cooperation between the two agencies should be examined further and a workable solution determined.

Even more disturbing is the lack of cooperation by the FBI with this subcommittee. Mr. Chairman, I suggest that we might consider requesting the Attorney General and the Director of the FBI to appear at a future hearing to explain why there is a lack of cooperation in this matter. It is the constitutional duty of Congress to oversee the operations of the executive branch, and if the staff report is accurate, we are being prevented from exercising that constitutional responsibility.

The effectiveness of the law enforcement agencies of our government is limited by this internal rivalry, and it must be stopped. This hearing is a significant step toward correcting this problem. Therefore, I look forward to hearing the testimony from today's witnesses about the scope of the problem.

Chairman ROTH. Thank you.

Senator Glenn.

OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Mr. Chairman, I have just a short statement. I want to acknowledge the importance of today's hearing, and the need to look at the interagency coordination or, I guess we should say, perhaps the lack thereof with regard to labor racketeering investigations. The focus of this hearing, specifically, is the Justice Department's handling of the investigation of Teamster Union president, Jackie Presser.

Questions have been raised over the alleged conflict and poor communication between the FBI and the Federal Strike Force operation in Cleveland. According to the information available, discrepancies and confusion were perhaps made even worse by officials in the respective agencies here in Washington. I fully support looking into the adequacy of current DOJ guidelines on the use of informants and sting operations.

I also favor examining whether changes need to be made in the cooperative arrangements between the Department of Justice and the Department of Labor and the Federal Bureau of Investigation. In today's hearing, we will be hearing from key officials in the administrative process surrounding this Presser probe.

However, I think we should proceed very cautiously and deliberately in considering the implications of the testimony we are about to hear. There has been much public speculation over the facts of this case. And today's hearing is not a witch hunt.

This hearing is intended to discover how we can prevent interagency mishaps from impeding future criminal investigations. We cannot afford either the reality or the impression that our Government is botching criminal investigations that involve politically well-connected individuals, whether in the union movement or in any other profession.

At the same time, it should be stressed that the specific facts in the *Presser* case are being examined by several Federal grand juries. At the proper time, the unresolved questions raised by the subcommittee's investigations will be answered. They will be answered by Federal grand juries composed of our fellow citizens, and this is the way it should be.

We will be reviewing the subcommittee's record on this issue in great detail. We will be paying close attention to the pending Federal grand jury and Justice Department investigations.

Thank you very much.

Chairman ROTH. Thank you.

We now have before us Howard L. Shapiro and John F. Sopko. Would you gentlemen please rise and raise your right hands? Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SHAPIRO. I do.

Mr. SOPKO. I do.

Chairman ROTH. Thank you and please be seated.

TESTIMONY OF HOWARD L. SHAPIRO AND JOHN F. SOPKO, STAFF STATEMENT

Chairman ROTH. Mr. Shapiro, will you please begin with your testimony.

Mr. SHAPIRO. Thank you, Mr. Chairman. Initially, I would like to place the entire staff study, which has been drafted by the staff, into the hearing record,[1] and I would also like to place a series of depositions taken by the staff into a confidential hearing record.[2]

Chairman ROTH. Without objection, so ordered.

Mr. SHAPIRO. Thank you. This has been a joint investigation conducted by the majority and minority staffs, and accordingly, John Sopko and I will be sharing the staff presentation this morning.

In late July 1985, the Department of Justice declined to prosecute Jackie Presser in connection with the alleged placement of ghostworkers on a local union payroll. Senators Roth and Nunn immediately announced that the subcommittee would conduct a preliminary inquiry to review why the Justice Department declined this prosecution.

The staff has conducted an extensive file review and has conducted 26 interviews with relevant personnel. The Department of Labor and the criminal division of the Justice Department have provided very good access to files and personnel, although some restrictions have been imposed, these restrictions involving wiretap information, grand jury information, and informant information.

The FBI provided no access to personnel and extremely limited access to files, and negotiations with FBI personnel have not been fruitful. I would emphasize that no Department of Justice personnel have confirmed or denied Jackie Presser's or anybody else's status as a possible informant.

[At this point, Senator Gore withdrew from the hearing room.]

Mr. SHAPIRO. A discussion of possible informants has not been necessary to conduct meaningful interviews and is not essential to the major issues that have been reviewed by the staff.

As the name implies, a ghostworker is an individual which is on a payroll, in this case, a local union, but does not perform any work. In the *Presser* case, agents from the Department of Labor Office of Inspector General received information early in 1982 that there had been several ghostworkers on the Teamsters Local 507 payroll in Cleveland.

The Labor investigators gathered almost all of the evidence in 1982 and 1983 concerning these allegations, but final prosecution memo did not reach the organized crime an racketeering section of Justice until January 1985, when the Cleveland Strike Force prosecutors recommended that indictments be returned against Jackie

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[1] The staff study referred to was marked exhibit No. 1 and appears on p. 75.

[2] The information referred to was marked exhibit No. 2 and retained in the subcommittee files.

Presser, Harold Friedman, and Anthony Hughes. In April 1985, Friedman and Hughes were dropped as potential defendants, and a proposed date was set for the indictment of Jackie Presser. In late July, the Presser prosecution was declined.

Once again, I would like to emphasize that the staff found no evidence of political interference based upon the interviews which we conducted. The key decisions were made by career Government attorneys within the Justice Department and were concurred in by midlevel political appointees. All persons interviewed by the staff denied that there were any efforts by political appointees to close the investigation or to improperly influence the course of the investigation.

The reason for dropping the case was the claim by FBI agents that they had authorized Jackie Presser's employment of those workers. The Department of Justice first learned of the alleged authorizations, in particular, for Allen Friedman and John Nardi, Jr., in June 1985, from Jackie Presser's attorney, John Climaco. The Justice Department then proceeded to interview the relevant FBI agents who corroborated Climaco's assertions.

Since questions have now been raised about the truthfulness of an agent's claims, two analyses are possible: If the agents' claims about the authorizations are true, then there would seem to be serious problems regarding internal FBI procedures and interagency coordination, as the prosecutors did not learn of these alleged authorizations until just before their proposed indictment of Presser, and even then, they initially learned of them not from the FBI.

If the agents' claims are not true, new questions arise concerning the agents' motives and statements made by the agents prior to June 1985. There is evidence that the agents' claims are not credible. For instance, the agents were interviewed by the prosecutors in 1984, and they discussed one authorization, but they failed to mention any authorizations involving Friedman and Nardi.

The staff has also learned that there are no FBI file entries regarding the alleged Friedman and Nardi authorizations, and the file entry for a third authorization was made after the actual event. As mentioned, the conduct of the agents is currently under review by the Justice Department's Office of Professional Responsibility and a Federal grand jury.

The evidence gathered by the staff indicates a failure of the strike force concept in this case, specifically, a failure to share relevant information and a failure to have all of the strike force entities striving for the same law enforcement objective. The Cleveland office of the FBI refused to participate in the ghostworkers case and did not share relevant information in several instances.

The organized crime and racketeering section in Washington cut off the flow of information to the Labor Department in early 1985, even though they were the primary investigative agency in this case. We also learned that the organized crime and racketeering section kept certain matters from their own prosecutors in Cleveland for an extended period of time.

The staff was also told of the general acrimony and distrust between the Labor Department and FBI offices in Cleveland. Allegations have been made by Labor personnel regarding FBI attempts to secure information on the ghostworkers case; alleged FBI attempts to influence potential witnesses; and FBI attempts to discredit the Labor investigators.

We have several witnesses here this morning from the Labor Department who are familiar with these allegations. One allegation involved an alleged bribe solicitation attempt by John Nardi, Jr., one of the local 507 ghostworkers.

In late 1982, Nardi attempted to arrange a meeting with Jackie Presser through Teamsters employee John Joyce. Joyce and John Climaco, Jackie Presser's attorney, went to the FBI, and a meeting between Nardi and Joyce was arranged. At this meeting, Nardi told Joyce that he would change his grand jury testimony, which had implicated Presser, for money and other help from Presser.

Following this meeting, Cleveland Strike Force attorneys wanted to arrest Nardi, but Joyce and Climaco would not go ahead with a plan to have Nardi fly to Ohio. Labor Department personnel have alleged that the FBI and Joyce were more interested in discrediting the Labor investigators than in charging Nardi.

There was also a concern within the Labor Department that the incident was initiated by Presser and his associates as a way to neutralize Nardi's testimony against Presser.

Labor Department files contain interview memos with information that Presser associates may have initiated the bribe solicitation, and John Nardi stated during a PSI deposition that the seed for this solicitation attempt was planted by his uncle, Nick Nardi, who works for Jackie Presser.

At this time, John Sopko will complete the staff testimony.

Mr. SOPKO. Mr. Chairman, as previously stated, the Department of Justice based its decision not to prosecute Jackie Presser on claims made by FBI agents that they had authorized Presser's conduct. There are two sets of Department of Justice guidelines governing these procedures that are pertinent for the time period in question. They are commonly referred to as the Levi guidelines, issued in 1976, and the Civiletti guidelines, issued in 1980.

The 1976 guidelines are almost silent on authorized criminal acts by informants or others. They merely state that an informant may not participate in criminal activities "* * * except insofar as the FBI determines that such participation is necessary to obtain information needed for purposes of Federal prosecution." They do not indicate who or under what circumstances the FBI would permit such criminal actions.

The Civiletti guidelines, however, address this issue in some detail. Since 1980, a written determination justifying an informant's participation in criminal activities had to be prepared by a "supervisory FBI official." Before permitting the criminal activity, written findings had to justify that this need outweighs the seriousness of the conduct involved.

For purposes of the 1980 guidelines, there are two types of criminal activities that could be authorized: extraordinary or ordinary. Extraordinary crimes involve "a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim." Ordinary crimes are anything else.

Since the amount lost to the union through the ghosting exceeded $700,000, it is unlikely that such an offense could be classified as ordinary. If it was determined to be an extraordinary offense, the

Civiletti guidelines require that only the special agent-in-charge can authorize such criminal activity and only after he obtains the approval of the U.S. attorney for that district. The determinations must then be immediately forwarded to senior Justice and FBI officials in Washington.

The question still remains whether current guidelines would permit the recurrence of the alleged Presser scenario. Since the staff was told that some of the Cleveland FBI agents involved felt their actions were not covered by either guidelines, results similar to the *Presser* case could reasonably be expected to reoccur.

As previously stated, the staff's investigation also raised questions concerning the Department of Justice's supervision of the FBI. In several instances during the course of the ghostworkers investigation, Department of Justice attorneys declined to aggressively pursue information from the FBI concerning authorizations.

Department of Justice representatives acknowledged in staff interviews that they were well aware for some time of rumors that Jackie Presser had "a relationship" with the FBI. Therefore, the reasonable course would have been for the Department, at an early point in the Presser investigation, to fully explore this putative relationship with the FBI.

David Margolis, the Chief of the Organized Crime and Racketeering Section at the Department of Justice, advised the Permanent Subcommittee staff that in late 1983, the FBI told him that Gigi Argie's placement on the union payroll as a "no-show" had been authorized by the FBI.

It would seem that this revelation about the Argie authorization should have motivated the prosecutors to insist that the FBI formally assure the Department that it was not withholding other critical information.

However, both Mr. Margolis and his deputy, Paul Coffey, told the subcommittee staff that neither of them questioned the FBI at that time about other authorizations.

Approximately 6 months later, Paul Coffey finally reviewed FBI files relating to the informant problem. During his review, Coffey saw noncontemporaneous memorializations of the Argie authorization. Coffey subsequently interviewed former agents Martin McCann, Fred Fehl, Roy McKinnon and current agents Patrick Foran and Robert Frederick. But rather than using accepted investigative methods that would document key information for the prosecution, Coffey approached the interviews in an informal and nonconfrontational manner.

In any event, he did ask the agents whether there were authorization problems with respect to other defendants. Coffey reported to us that he was satisfied with the agents' responses.

Despite Coffey's expressed satisfaction with the agents' responses, the staff has learned that as late as April 1985, the Department of Justice suspected that it still did not know the full scope of the FBI's relationship with Presser. The staff reviewed a hypothetical draft plea agreement of the Department of Justice with a cover memo stating that the proposal would require modification after a discussion of factual and legal issues, I quote, "specifically, the degree of the FBI's knowledge of ghosting."

A DOJ official explained this portion of the memo by stating that the Department of Justice "suspected something lurking in the background."

On June 20, 1985, Mr. Coffey and the two prosecutors from Cleveland reinterviewed agents McCann, Frederick, and Foran. The tenor of these interviews, as described to the PSI staff by the DOJ participants, was not vigorous.

Coffey told the PSI staff that he did not want the interviews to be confrontational. Nevertheless, Jigger and Olah told the staff that the agents were vague and evasive about why they had not reported the Presser authorizations during their 1984 interviews. Coffey also conceded that the agents' explanations of discrepancies were not very good.

The evidence recounted above suggests that apart from the precise problems which emerged during the Presser investigation, the Department of Justice may have a flawed supervisory relationship with the FBI where it could affect Justice Department prosecutions. Unless the Department exercises it authority and responsibility to direct the FBI and demand a full accounting of the FBI's activities as they impact on other work of the Department, the same types of problems that occurred during the *Presser* case may well occur again.

The subcommittee also reviewed allegations concerning special treatment or favoritism shown to Jackie Presser, members of his family or associates by the Government. They can be broken down into three general areas: First, that the Department of Justice allegedly placed unnecessary and unusual restrictions upon the search of Jackie Presser's union hall; that the Department of Justice prematurely closed the Hoover-Goren investigation in 1982; and that the Department of Justice prematurely closed or declined to prosecute approximately 10 other cases.

That last point will be covered by the General Accounting Office today when they testify.

The staff found that Paul Coffey initially mandated certain restrictions on the search of Jackie Presser's union hall. These restrictions barred the Labor Department from searching Jackie Presser or Harold Friedman's office. They were later changed to permit the search.

Coffey told the staff that at the time of the search, the Government was under attack in a local paper. John Climaco was claiming that the Department of Justice was trying to frame his client. Coffey explained that he, therefore, wanted to conduct the search in a way that would avoid challenges to the Government's integrity.

In reviewing the timing and circumstances surrounding the closing of the *Hoover-Goren* case, it appears that this case was closed before the investigation had run its full course. However, the Department of Justice claims that the case was closed because of inadequate attorney and investigative resources, as well as serious legal complications.

Today, GAO will also provide estimates of the actual cost of conducting the ghostworker investigation. In addition, the subcommittee staff has attempted to document other nonmonetary costs from the aborted Presser investigation.

In presenting these costs, the staff recognizes that due to the pending grand jury investigations, some of these consequences may be ameliorated.

Nevertheless, Deputy Inspector General Raymond Maria stated to the staff that in his opinion, one of the most significant consequences of this aborted probe was its long-term effect upon the entire Government's labor-management racketeering program. His reasoning was that there were lost investigative opportunities to the Government. While the Department of Labor was devoting its resources, estimated at over 22,000 man hours, on the ghostworker case, they were constrained from investigating other allegations of labor racketeering.

In the same vein, Steve Olah, the Chief of the Organized Crime Office in Cleveland, predicted immediate adverse local reactions to the Federal law enforcement community in Cleveland from the closing of the probe.

Another repercussion from the Government's handling of the *Presser* case concerns its impact upon the rank and file members of the Nation's labor movement. An unsolicited letter from a union organization best expresses this concern. In part, it states:

> The United States Department of Justice has sent a very important and clear message to every one of the 1.6 million members of the Teamsters Union. This message reads, "if you stand up against organized crime in your union, do so at your own risk. You will not find an ally in the Justice Department."

Although impossible to quantify, Mr. Chairman, this last expression from the union rank and file may describe the most significant long-term consequence of the aborted Presser probe.

This completes the staff's oral presentations, Mr. Chairman. We are pleased to answer any questions you may have at this time.

Chairman ROTH. Thank you, gentlemen. I appreciate your testimony.

I only have one question at this time. I, too, am concerned about what you characterize as the, perhaps, flawed supervisory relationship between the Justice Department and FBI. I am concerned that there did not appear to be the kind of aggressive effort to determine what the FBI was doing in the ghostworkers cases.

I am also concerned by the fact that the FBI did not appear to be, on its own, disclosing adequate information to the Justice Department. Would you agree with that? Aren't they required, under the present guidelines, to keep the Justice Department advised upon their programs that affect prosecutions by the Justice Department, and if they aren't required, shouldn't the guidelines contain such requirements?

Mr. SOPKO. Mr. Chairman, under the post-1980 guidelines, that would be the Civiletti guidelines, and I can quote from those guidelines on that, it says:

> In any matter presented to the United States Attorney or other federal prosecutors for legal action where a matter has involved the use of an informant or confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature or scope of the confidential informant's participation.

Whether it is in the guidelines or not, Senator, or in internal regulations, it is just good to keep one hand of the Federal Government aware of what the other hand is doing, and I think this is a classic case of the problem.

Chairman ROTH. I consider that a very, very serious problem, and it seems to me neither party conducted itself in such a manner as it should have under the circumstances.

Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman. I want to thank the staff for the work you have done. I have a couple of questions here.

One is on page 4, Mr. Sopko, of your statement, you refer to three areas of inquiry in terms of special treatment or favoritism alleged to have been shown to Jackie Presser or members of his family by the Government. In your overall finding, you concluded, on page 9 of your overall statement, this is your longer statement, and I quote:

> Based on its review, the Subcommittee staff has found no evidence to support allegations of political influence. Each of the Department of Justice and the Department of Labor staff persons interviewed by the PSI staff denied receiving any pressure from administration officials to conduct the Presser investigation in any particular fashion or to close the investigation without prosecutions.

Now, that finding I have just read, that applies, as I understand it, to the Presser ghostworker investigation; is that right?

Mr. SOPKO. That's correct, Senator.

Senator NUNN. Is that right, Mr. Shapiro?

Mr. SHAPIRO. That's right.

Senator NUNN. So you went into considerable detail, and you interviewed literally everyone you could, except high-level officials, on this question of the Presser ghostworker investigation; is that correct?

Mr. SOPKO. That is correct, Senator.

Senator NUNN. You have referred in your statement, as I just referred to, the three other allegations in general that don't relate directly to the *Presser ghostworker* case. Now, you do not conclude anything on those. You cite Paul Coffey and what he did and so forth, but I do not see a conclusion.

I think it is important, if there is a line to be drawn, to draw a line between these three areas of inquiry and the ghostworker inquiry. Would you address that?

Have you made definite findings on these other three areas of inquiry about the political influence or the lack thereof?

Mr. SOPKO. Senator, I don't think the staff has drawn any specific conclusions on those three areas. I can start with the third area, and this is equally applicable, I think, to the others, namely that many of these cases are old. There are not adequate files. Some of the participants may have died or we do not have access to them. Particularly, as the General Accounting Office will describe, some of these cases go back to the seventies, and the Department of Justice can't even find the files on them, so it is impossible to make any conclusion, other than that we could not see any pattern developed, in at least those cases from the seventies.

Concerning the Hoover-Goren investigation, the case was obviously closed early by the Department of Justice. They admit that. They say they did it, not because of political influence or because of anything else, but because of staff problems, manpower problems, and legal problems inherent to the case. We could not take it any further than that, Senator.

As for the search of Jackie Presser's local union office, it is the same, Senator. We could not draw any specific conclusions other than it does not appear to have been closed for any political influence. It was a judgment call by the Department of Justice.

Whether the judgment call by the prosecutors was correct or not, we are not at this time inclined to second-guess.

Senator NUNN. You do not purport in these three areas that you mention that do not relate to the ghostworker matter, you do not purport to have gone into the kind of thorough examination that you have in terms of the ghostworkers; is that right?

Mr. SOPKO. That is correct, Senator, although in some of these cases, there is an overlap in the witnesses. Particularly the *Hoover-Goren* case and of course, the search of the union hall were part of the ghostworker investigation.

Senator NUNN. Mr. Shapiro, would you like to add to that to clarify it in any way? I think it is important for the subcommittee to have on the record here what we did thoroughly and what you basically could not do thoroughly and did not do thoroughly.

Mr. SHAPIRO. As John said, with the search and the Hoover-Goren closing, we were basically presented with differing interpretations of facts by the Justice Department and by the Labor Department personnel.

There was never any indication that, in these interpretations, that there were political considerations. As John said, with the older Department of Justice investigations, there was a problem in getting access to files, and they were lost or people were unreachable, and there were no patterns found. The General Accounting Office has taken a look at those cases in more detail than we have, and they will be able to present their evidence and conclusions later on this morning.

Senator NUNN. On the ghostworkers case, back to that one, which was your main subject of inquiry, you went into considerable detail with the people who made the decision not to prosecute; is that right?

Mr. SOPKO. That's correct, Senator.

Senator NUNN. In the Department of Justice, your conversations with them revealed no political influence from people in the White House or no political influence from other people in the administration, that you could detect, to close those cases; is that a correct assessment?

Mr. SOPKO. That is correct, Senator.

Mr. SHAPIRO. That is correct.

Senator NUNN. On the question of the FBI, on page 5 of your lengthy testimony, and I am not sure whether this was in your testimony you have given, you state here, and I quote beginning at the bottom of page 4:

> The FBI has only permitted the review of redacted files dealing with the bribe solicitation investigation of John Nardi, Jr. It has refused to turn over any investigative files. Until recently, the FBI had even refused repeated requests for its internal guidelines regarding authorizations. These 1980 guidelines were finally provided on January 27, 1986 to the Subcommittee by Assistant Director Oliver Revell. While FBI Director William P. Webster did on two occasions personally discuss this matter with Senators Roth and Nunn, the FBI's overall attitude toward the Subcommittee's

investigation can be fairly characterized as one of obfuscation, intransigence, and delay.

In terms of that, those are pretty strong words. What did you ask for that you did not receive?

Mr. **Shapiro**. Senator, we basically asked for the FBI investigative files on the ghostworkers case. This was the same request that was made to the Labor Department and to the criminal section of the Justice Department. We were able to negotiate with Labor and with the criminal section. We were able to receive extensive files, some of them with excisions involving grand jury information or informant information.

We were always able, though, to reach accommodation with the Labor Department and the criminal section for these files.

The identical request was made to the FBI. There were extended negotiations where no accommodations were reached, and it is—the staff found it difficult to reconcile the fact that we were able to reach these sorts of agreements with the other agencies and not with the FBI, given the fact that we were making the same sort of request.

Senator **Nunn**. How much of this refusal could you attribute to the overall matter of informants, and how much of it was related to things that you were requesting that had no bearing on informants? Did you draw a line here?

Mr. **Shapiro**. Senator, we realize that there was a problem here with files that may contain informant information. But as I mentioned, we also believe that we were able to address the major issues, the issues of political interference, the issue of authorizations without specifically addressing the informant issue, and there is no doubt, as we did with the other agencies, that we could have accepted files that had been excised, all the informant information could have been excised, and we could have looked at those files and determined if those excisions were acceptable; determined if those files were sufficient for our needs to address the issues we wished to address, and those files were not forthcoming from the FBI.

Senator **Nunn**. In other words, you offered to be understanding in terms of the FBI's overall desire to protect informants and to work with them around that problem and not to demand that specific information; is that correct?

Mr. **Shapiro**. That is absolutely correct. We were able to reach that agreement with the Labor Department and the Criminal Section.

Senator **Nunn**. Did you ever ask them to identify any specific informant?

Mr. **Shapiro**. We never asked them. We never asked the Department of Justice, and no specific informants have been identified by the Department of Justice, the Criminal Section.

Senator **Nunn**. How about the interviewing of personnel? Did you ask for permission to interview certain FBI personnel?

Mr. **Shapiro**. We did ask for permission to interview personnel, and that was denied by the FBI, basically for the same reasons as the file denial.

More recently, the Office of Professional Responsibility placed restrictions on our access to FBI personnel due to the pending grand jury, but prior to that restriction, the FBI had still refused to make personnel available to us, and once again, we did have, as I think is evident from the staff study, detailed discussions with Labor personnel and Criminal Section personnel at the Justice Department. We were able to discuss these major issues without getting into specific informants and without compromising anybody's informant program.

Senator NUNN. Mr. Sopko. Mr. Shapiro, would you give your formal background before you came to work with the subcommittee? Starting with Mr. Sopko.

Mr. SOPKO. Senator, of course, I am an attorney at law. Following law school I was an assistant prosecuting attorney in Dayton, OH. After that for 4 years, I was a special attorney, assigned to the Organized Crime and Racketeering Section in Ohio. I have been working for the subcommittee since July 1982.

Senator NUNN. What department?

Mr. SOPKO. With the Department of Justice, U.S. Department of Justice.

Senator NUNN. Who was your superior?

Mr. SOPKO. Steve Olah.

Senator NUNN. Mr. Shapiro.

Mr. SHAPIRO. Following law school, I practiced criminal law here in the District of Columbia; then worked for the House Assassinations Committee, looking at the Kennedy assassination. Following that, I worked for the Better Government Association, which is a private investigative group, and I have been with the subcommittee since 1980.

Senator NUNN. Thank you.

Chairman ROTH. Thank you.

Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman. I just have several very short questions. Mr. Sopko, on page 3 of your prepared statement, in the last sentence it says, "Coffey told the PSI staff that he did not want the interviews to be too confrontational."

You used the word "controversial" during your testimony. I assume you meant confrontational.

Mr. SOPKO. Confrontational, I'm sorry.

Senator RUDMAN. Did you ever find out why they did not want it to be too confrontational, since, based on your report and based on my knowledge of what you did, it was fair to assume that at the time of those interviews, the interviewers were concerned that there was evidence that they did not have that might explain some of this conduct?

So that being the case, if that is the case, and correct me if I am incorrect, but if that is the case, why would they have not wanted the interviews to be confrontational?

Mr. SOPKO. Senator, first of all, you are describing the case correctly. You have to realize, this interview occurred in 1985. By then the Department of Justice has devoted a number of years to this investigation. The Department of Labor has devoted a number of years. Then at the eleventh hour they hear about authorization, alleged authorization by FBI agents of the criminal conduct which the Department of Justice and the Department of Labor has been looking at for 3 years.

The explanation given by Mr. Coffey was that he felt he wasn't there to do the job of the Office of Professional Responsibility; he merely wanted to make a decision on whether to prosecute or not. He also was concerned that if he was confrontational, the agents may refuse to talk to him and refuse to give him their story.

Senator **Rudman**. What obligation do FBI agents have in that kind of a circumstance, talking to DOJ investigators? The FBI is part of the Department of Justice, the last time I checked.

What authorization do they have to confront people, to force answers like they would any other citizens under rules and regulations, other than somebody who wanted to take the fifth?

Mr. **Sopko**. I would assume, Senator, they are obliged, as you said, in the same manner as any American citizen when questioned by the Government on a criminal matter. Additionally, they are Department employees. They work for the Department of Justice, the U.S. attorney or Attorney General of the United States.

We have not seen any specific regulations that say that FBI agents can or cannot talk to Department attorneys, but it would seem as Department of Justice employees that they would be fully obliged to answer those questions as posed by Mr. Coffey.

Senator **Rudman**. Is there a transcript of that interview which exists?

Mr. **Sopko**. No, Senator. There was interview notes taken by an FBI agent there, who then prepared, I believe, affidavits or statements for the agents to sign.

Senator **Rudman**. Is that unusual?

Mr. **Sopko**. That is unusual. Well, if I can back up on that, Senator, this is an unusual case. I don't know if we have any rules or regulations for that, but it is unusual that the Department of Justice attorneys abdicated the responsibility of preparing the affidavits to the FBI. That is unusual.

Senator **Rudman**. Is it not the normal practice, as I understand it, in that type of interview, to have an informal or formal transcript?

Mr. **Sopko**. I think in retrospect, it would have been beneficial for all concerned, but I can't say for sure if it would be normal practice, Senator. This is a very unusual situation in which you have these types of allegations arising.

Senator **Rudman**. I wanted to go to page 12 of the staff report, and either one of you can answer the question. The second paragraph from the bottom states:

> There was evidence that the agents' authorization plans were not credible. For example, PSI staff learned that there is no written record of the Friedman and Nardi authorizations in the FBI files as there is for the Argie authorization. The agents claimed at the time of their actions there was no requirement to memorialize the authorizations into writing under DOJ guidelines.

There was an authorization in the *Argie* case; is that correct?

[At this point, Senator Nunn withdrew from the hearing room.]

Mr. **Sopko**. I think so.

Senator **Rudman**. How did they explain the inconsistency? If they claim that there was no requirement for authorization, then why did they get one case and fail to get one in two others?

Mr. **Shapiro**. Senator, it is our understanding, from what we have been told by the Justice personnel, that even in the *Argie* case, the authorization, the noncontemporaneous authorization was not written by the case agents themselves but was written by an FBI official here in Washington.

Senator RUDMAN. Did you say noncontemporaneous?

Mr. SHAPIRO. Noncontemporaneous. The Argie authorization allegedly took place in the mid to late seventies, the late seventies. The file entry was made in 1983.

Senator RUDMAN. Are you essentially saying that what we are dealing with here is an ex post facto authorization to commit a criminal act?

Mr. SOPKO. That is the way it appears, Senator. Mr. Argie was on the payrolls for ghostwork from 1978 to 1979. As Mr. Shapiro has indicated, the authorization is dated, I believe, November 11 and, I think, December 19, 1983, by Mr. Moody.

Senator RUDMAN. And there is no written authorization but they claim there was oral authorization in the Friedman and Nardi cases; is that correct?

Mr. SOPKO. That is the claim.

Senator RUDMAN. But that authorization could well have been given long after the alleged acts took place; is that correct?

Mr. SOPKO. That is correct.

Senator RUDMAN. Which would be totally outside any guideline.

Mr. SHAPIRO. That is possible, Senator. The problem is we have not had access to the FBI agents in these cases.

Senator RUDMAN. What you are telling the committee, and I want to make sure I understand it—it is my last line of questioning here—what you are saying is that the position of certain participants in this matter is that they gave authorization, and they can't prove that they gave it before the criminal act, so essentially, they are giving it after the criminal act took place.

Mr. SHAPIRO. Senator, your characterization is correct. I want to emphasize that we have not spoken to the FBI agents; we have not reviewed their files; and our information is based on interviews which we conducted with Justice personnel.

Senator RUDMAN. Well, maybe the purpose of this hearing, if that is certainly a reasonable conclusion to draw from what I have read, and if that is not so, than I would think that the proper authorities within the Bureau, who I have great respect for, would want to come forward and say that is not so, because if it is so, what we have here are agents sitting down with informants and various other people like we had in a number of other cases this committee has looked at, and saying to people, "Well, you committed that criminal act, and we will give you authorization 2 years after you did it or 1 day after you did it."

If that is happening, then, Mr. Chairman, we have got a very serious problem here.

Chairman ROTH. I would point out, as is pointed out, I think, in the staff report, that this is a matter as to whether or not there were actually authorizations given and under what circumstances that is being investigated by the Department and by the grand jury. So that is not an area that we have the information on, because we have deliberately tried to keep away from anything that could in any way endanger the probable prosecution of the cases.

Senator Rudman. I understand that, Mr. Chairman. I just wanted to say that I think that the staff has done an excellent job. My questioning, Mr. Chairman, was just to try to find out what they are now saying very clearly, and hopefully, the Department of Justice will get to the bottom of this.

Chairman Roth. It is very important, I think, for everyone to understand that the subcommittee and the subcommittee staff has very carefully avoided trying to do anything that could in any way encroach or endanger any possible prosecutions. It is the intent of this subcommittee, of the chairman and the ranking member, as well as the full committee, to watch what happens in the days and months ahead.

But I think you did review this matter in quite a bit of detail in this staff report, and I congratulate you.

Senator Glenn.

Senator Glenn. Thank you, Mr. Chairman. The committee staff, you two, have looked into this and all parties involved with this probably more than anyone else. Other witnesses today will come from the particular departments, the Departments of Labor, Justice, the General Accounting Office, and so they have their own particular viewpoint that may or may not be a little bit biased by where they work.

But you have looked into all aspects of this. I think the committee should know your opinions of this as to whether what went on here were problems of omission or commission.

In other words, was this a series of events that just lacked coordination because maybe certain agencies were trying to be secret and protect their own investigation and the lack of cooperation stemmed from that. Can this be improved in the future? Or, and this is a big "or," or were these things of commission?

Was this lack of cooperation and coordination, was it deliberate, was it directed with some other purpose, either directly or indirectly through deliberate obfuscation?

You two are in a particularly advantageous position to make that judgment, it seems to me, if you can do it.

[At this point, Senator Rudman withdrew from the hearing room.]

Senator Glenn. That is the basic thing that this committee wants to look into. Was this just a series of foul-ups that can be improved with a little bit of coordination in the future, or, on the other hand, was this something deliberate that was done in this particular case? It seems to me that is the very basic question.

Can you give us your opinion on that?

Mr. Shapiro. Senator Glenn, we are in an advantageous position, but we are also in a very sensitive position, as the chairman just mentioned. There is no doubt that there was the lack of cooperation and the lack of coordination in this case.

But the issue of whether it is a series of mishaps or is some sort of deliberate pattern is the issue that is being reviewed by the grand jury right now. For that reason, in particular, I don't believe it would be appropriate for us to offer an opinion right now.

I hate to give you that answer, but I think, given the sensitivity of the situation, it is the most appropriate response.

Senator GLENN. I hate to have that answer, but I also understand the position you are in.

Go ahead, Mr. Sopko.

Mr. SOPKO. I will have to agree with Mr. Shapiro on this. This is basically what is being considered and being investigated by three grand juries.

Senator GLENN. It is basically what this committee has to find out, I think. That is really the purpose of the whole hearing, if you want to get to the bottom line.

Mr. SOPKO. I think we have identified some inherent omissions in the system. I mean, the system does have some problems in coordination, so we can at least say that much. But if you get into whether an individual in Cleveland or elsewhere committed some acts, I don't believe it would be proper at this time for us to really comment any further.

Senator GLENN. OK. That is the bottom line, it seems to me, on what this committee and what your investigation, what the determination is that we have to make eventually, whether we think it was one course or the other, and that is really what this whole set of hearings is all about.

With regard to the previous line of questioning here, have you called on the FBI to open up their files and get the matter cleared up once and for all?

Mr. SHAPIRO. We have called on the FBI many times to open up their files, and as mentioned before, we have tried to negotiate with the FBI just as we have negotiated with the other agencies, and we have been unable to reach an amicable solution. We have been unable to reach any solution because we have not gotten any files besides the limited files on the Nardi bribe solicitation attempt and the internal guidelines.

Senator GLENN. Thank you, Mr. Chairman.

Chairman ROTH. Thank you.

Thank you, gentlemen.

At this time, we will call forward Jack Nardi, Jr.

Mr. Nardi, if you will please stand and raise your right hand, do you swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NARDI. I do.

Chairman ROTH. Please be seated, and proceed with your statement.

TESTIMONY OF JOHN NARDI, JR.

Mr. NARDI. Mr. Chairman and members of the subcommittee, my name is John Nardi, Jr. I am originally from Cleveland, OH, and I lived there for many years.

[At this point, Senator Glenn withdrew from the hearing room.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, DC.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any Member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with the hearings on the Department of Justice's handling of the Jackie Presser Ghost Workers investigation, to be held on May 9 or 15, 1986.

William V. Roth, Jr.
Chairman.
Sam Nunn,
Ranking Minority Member.

Mr. Nardi. I was employed by Teamsters Local 507 from 1972 through 1978, although I performed no services for the union. I told this to a grand jury in 1982.

In late 1982, I attempted to obtain a loan and other benefits from Mr. Jackie Presser based on my claim that I would be willing to change my grand jury testimony. In 1983, I pled guilty to charges concerning both my receipt of a salary from local 507, for which I performed no actual work, and my attempted loan from Mr. Presser. This guilty plea was made only after an agreement was made with the Justice Department. This agreement stated that if I truthfully testified at all future trials, the Justice Department would inform the Federal judge hearing my case that I had fully cooperated with the Government and this would be taken into consideration at the time for sentencing.

In late 1985, at the Government's request, Federal Judge John Manos dismissed the charges against me. I have testified three times before a grand jury in Cleveland, and I also gave a deposition to the subcommittee staff. In all instances, I have told the truth to the best of my recollection, and I will tell the truth today.

In 1972, my father, John Nardi, who was secretary-treasurer of Teamsters Local 410, and I met with Mr. Jackie Presser at the offices of local 507. Mr. Presser told me at that time that I would be a business agent for local 507 and receive a salary of $300 per week. He also said that he would contact me at a later date as to when I was to report for work. I was never called to work, and my paychecks were mailed to me on a weekly basis. These checks were signed by Jackie Presser and Harold Friedman.

The next time I heard from Mr. Presser was in 1978, which was 6 years later. I met with him and he told me at the time that he could no longer keep me on the payroll of local 507 because of a Government investigation and that I could possibly be in trouble for being on the payroll. I found this very strange at the time, because although I received a check from local 507 and performed no work for the local or its affiliates, I was only doing what I was told. I was always willing to work, but no work was ever offered.

I was contacted by Department of Labor agents Jim Thomas and Red Simmons in 1982. At this time, they asked me if I had performed any work for local 507 or its affiliates and how long I have been receiving a salary from local 507.

[At this point, Senator Nunn entered the hearing room.]

Mr. Nardi. I told them the truth and later testified truthfully before a grand jury in Cleveland.

After I testified before the grand jury, I had contact with my uncle, Nick Nardi, who works for the Teamsters Union. At this time he told me to contact a lawyer by the name of Robert Rotatori. I contacted Mr. Rotatori by telephone, and he told me he was representing Mr. Jackie Presser. At this time he asked me what sort of questions the grand jury had asked me. I told him I had truthfully answered all their questions, and I will do so in any future hearings. He was upset with this, and we had a dispute, and I hung up on him.

After my conversation with Mr. Rotatori, I spoke to my uncle, Nick Nardi, who asked me why I had a disagreement with Mr. Rotatori. At this time, I told him that if I was called to testify at a future date, I would have to tell the truth. He indicated that Mr. Presser would not be happy about this because I had been paid by Teamsters Local 507 for all those years.

In late 1982, I had a conversation with Mr. Sam Rapisarda, a long-time friend of mine who lived in Cleveland, OH. We agreed that he would speak to John Joyce, who at the time worked for Jackie Presser. We decided that he would tell Mr. Joyce that I wanted to have a meeting with Mr. Presser. Mr. Rapisarda called me back and told me that John Joyce said it wouldn't be wise for Mr. Presser to meet with me, but that he would represent Mr. Presser.

A meeting was arranged in Fort Lauderdale, FL, on December 10, 1982. I met with Mr. Joyce, and I told him that I would be willing to change my grand jury testimony or become unavailable as a witness in exchange for a $20,000 loan from Mr. Presser. I later learned that Mr. Joyce was secretly recording our conversation with the full cooperation of the FBI.

In 1983, I testified truthfully before a grand jury in Cleveland about my attempted loan solicitation of Mr. Presser. I was never going to change my grand jury testimony. Everything I said to Mr. Joyce was done so that I would be able to get the loan from Mr. Presser.

That concludes my statement, and I will be happy to answer any questions the Senators may have.

Chairman Roth. Mr. Nardi, did you state that you never performed any work for local 507?

Mr. Nardi. That is correct, Senator.

Chairman Roth. Why were you called in and put on the payroll? In your testimony you say in 1972 you met with Jackie Presser and he said you would be a business agent and would receive a salary for the union, but he never called back.

What is your understanding of the reason for this action being taken?

Mr. Nardi. Well, at the time, I couldn't understand why he didn't want me to go to work, and I asked my father on many occasions, and he said, "Just don't worry about it; go on collecting the checks."

I'm sure now, as testimony has come out, that Mr. Presser's informant role with the Government undoubtedly was a basis for his placing me on the payroll.

Chairman Roth. What was the role of your father in the union movement?

Mr. Nardi. He was secretary-treasurer of local 410 in Cleveland and also a long-time friend of William Presser, Jackie Presser's father.

Chairman **Roth**. What happened to the union, this 410 that he headed?

Mr. **Nardi**. I'm sorry?

Chairman **Roth**. You say he was associated with a local.

Mr. **Nardi**. Local 410, the vending local in Cleveland.

Chairman **Roth**. What happened to that particular union?

Mr. **Nardi**. I believe it was merged into local 416 after my father's death.

Chairman **Roth**. Did Jackie Presser put you on the payroll as a favor to your father?

Mr. **Nardi**. I believe so, yes, sir.

Chairman **Roth**. You testified, I recall, that in late 1982, you had a conversation with Sam Rapisarda——

Mr. **Nardi**. Yes, sir.

Chairman **Roth** [continuing]. A friend of yours who lived in Cleveland. Prior to that time, did you have any conversation about your testimony to the grand jury with your uncle?

Mr. **Nardi**. Yes. I had a phone conversation with my uncle, Nick Nardi, who said at the time that it would be worth my while if I would possibly change my testimony.

Chairman **Roth**. Where does Nick Nardi work?

Mr. **Nardi**. For Teamsters Local 416.

Chairman **Roth**. Was that phone call instigated by your uncle or by you?

Mr. **Nardi**. I believe it was instigated by him, sir.

Chairman **Roth**. Did any other members of your family talk to you about testifying against Jackie Presser?

Mr. **Nardi**. Yes. My mother thought it was not a good idea, but she was more or less worried for my welfare, I believe.

Chairman **Roth**. Who initiated your meeting with Sam Rapisarda? Was that at your initiation, or was that Sam?

Mr. **Nardi**. It was sort of a mutual agreement, Senator. We talked a lot over the telephone about many different subjects, and I approached him after the seed was planted in my mind about possibly changing my testimony for some sort of compensation.

Chairman **Roth**. Who planted that seed in your mind?

Mr. **Nardi**. Well, my uncle, Nick Nardi, did originally.

Chairman **Roth**. Senator Nunn.

Senator **Nunn**. Thank you.

Mr. Nardi, have you been convicted of criminal charges?

Mr. **Nardi**. Yes, sir.

Senator **Nunn**. Could you tell us what those were?

Mr. **Nardi**. There was a charge in Florida, I believe it was a grand theft charge, I'm not sure, in 1982, which I pleaded guilty to and received a 6-month sentence, and also I was convicted—I pled guilty to a check charge in Cleveland OH, which sentence is still pending.

Senator **Nunn**. A check charge? What kind of check charge?

Mr. **Nardi**. A bad check, bad check.

Senator **Nunn**. That is still pending?

Mr. **Nardi**. I pleaded guilty, and the sentencing is pending.

Senator **Nunn**. How about the ghostworker situation that we are referring to here today in this hearing? Did you get tried for any criminal violation there?

Mr. NARDI. As I said in my statement, I pled guilty to both charges, Senator.

Senator NUNN. What were the charges?

Mr. NARDI. One was being a ghost employee, and I believe the other one was solicitation of the loan from Mr. Presser.

Senator NUNN. When were those charges? When did you plead guilty to those charges? What year was that?

Mr. NARDI. I believe it was 1983.

Senator NUNN. Did you go to jail?

Mr. NARDI. I served 5 months in jail, yes, sir, but not on those charges.

Senator NUNN. Where were you in jail?

Mr. NARDI. I started in West Palm Beach, FL, and then the Government transported me across country into many jails, but it took about a week and a half.

Then I was incarcerated at the Justice Center in Cleveland, OH; then transferred to the Ashland County jail, where I finished out the 5 months.

Senator NUNN. When you were in the Palm Beach jail, was this after the ghostworker charge had already been made and you pled guilty, or was it before?

Mr. NARDI. Before, Senator.

Senator NUNN. What were the charges you were in jail there for, the grand theft charge?

Mr. NARDI. Yes, sir.

Senator NUNN. You were serving time in Florida?

Mr. NARDI. No; I wasn't serving time. I was arrested on that charge, and then a hold was placed on me by Cleveland, the Justice Department, against the charges of the ghost employee and the solicitation.

Senator NUNN. So that was a charge pending against you in Florida, and that was when you were in the Palm Beach jail?

Mr. NARDI. Yes, sir.

Senator NUNN. When you were there, did you have any interviews with any governmental agents, Federal agents?

Mr. NARDI. Yes, sir. I had a visit by FBI agent Nelson Gordon, and also by Labor Department agents Red Simmons and Jim Thomas.

Senator NUNN. Were they together or were they separate?

Mr. NARDI. No, they came on separate occasions.

Senator NUNN. Was it in the same timeframe, a week or two?

Mr. NARDI. I would say maybe days apart.

Senator NUNN. Days apart. Could you tell us who was the FBI agent?

Mr. NARDI. Nelson Gordon.

Senator NUNN. Was it just one agent?

Mr. NARDI. Yes, sir.

Senator NUNN. Would you tell us what that interview consisted of?

Mr. NARDI. Well, he asked me, in the interview, as far as I can remember, basically about the solicitation of the bribe and my dealings with agents Thomas and Simmons.

Senator NUNN. Thomas and Simmons being Labor agents?

Mr. NARDI. Labor agents, yes, sir.

Senator NUNN. What did he ask you about them?

Mr. NARDI. Well, he asked if I had had contact with them recently, and I said yes, they were there to visit me. I believe they visited me before Mr. Gordon did. He said that it wouldn't be wise for me to communicate with them, as they didn't have my welfare in their best interests and that they were a couple of clowns who couldn't even carry a gun.

Senator NUNN. He said they didn't carry a gun.

Mr. NARDI. He said they weren't allowed to carry a gun.

Senator NUNN. Why did he tell you that you shouldn't talk to them?

Mr. NARDI. He said because over the Christmas holdays they were trying to find me so they could have me arrested, and kept calling my mother's home and hanging up, hoping that I would answer the telephone, even though I was not in Cleveland, OH, at the time anyway.

Senator NUNN. So here was an FBI agent telling you, in jail, that you shouldn't talk to the Labor agents and that they were a couple of clowns because they didn't carry a gun?

Mr. NARDI. Yes, sir.

Senator NUNN. The Labor Department people interviewed you, but you said they interviewed you before?

Mr. NARDI. Before the FBI agent, yes, sir.

Senator NUNN. What kind of conversations did you have with them?

Mr. NARDI. Basically, the complete opposite. They told me to have nothing to do with the FBI. [Laughter.]

Senator NUNN. Did they mention why?

Mr. NARDI. They didn't have any—they were out to entrap me, and that they entrapped me on the recording with Mr. Joyce and they were out to discredit me as a witness to the benefit of Mr. Presser.

Senator NUNN. Did you come to any conclusions about which agents of the Federal Government had your best interest at heart? [Laughter.]

Mr. NARDI. Yes, sir: None. [Laughter.]

Senator NUNN. Thank you, Mr. Chairman. [Laughter.]

Chairman ROTH. You are excused, Mr. Nardi.

Mr. NARDI. Thank you.

Chairman ROTH. We will now call before the committee a panel consisting of Robert Magee, former Acting Inspector General of the Department of Labor; Raymond Maria, Deputy Inspector General of the Department of Labor, and David Williams, Director of Field Operations, Department of Labor's Office of Inspector General.

Gentlemen, if you will remain standing and raise your right hands, do you swear the testimony you will give before the subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. MAGEE. I do.

Mr. MARIA. I do.

Mr. WILLIAMS. I do.

Senator NUNN. Mr. Chairman, at this point, before these witnesses start testifying, the previous witness said something that I think goes to one of the questions we have got to answer. As you recall, this subcommittee has been in favor of giving the Labor Department investigators law enforcement authority. Every time we have tried to do that, we have been opposed on that by the Justice Department, and, I believe, also by the FBI.

What we have just heard—and we will hear from the Department of Justice in a moment about it—but what we have heard is very indicative of this problem. We have an FBI agent, and they certainly have the right to deny this, and we will give them an opportunity, although so far we haven't been given access to their personnel, we have an FBI agent, according to sworn testimony here, that basically said that the Labor Department people were clowns because they weren't able to carry a gun.

We have that same agency in the Justice Department fighting every step of the way against the Labor Department being given law enforcement authority. I think that ought to be noted for the record. On the one hand, opposing it; on the other hand, making fun of it. I think it does go to one of the serious questions we have to face as to whether we are going to basically enforce the intention of Congress in giving the Labor Department the kind of authority we have expected them to exercise, and, in fact, in the past, have excoriated them for not exercising. I think that really is a key part of where we are going.

Chairman Roth. I strongly agree with your comments, Senator Nunn. I think it was really under your stewardship of this subcommittee when much of the criticism took place of the Labor Department's failure to actively pursue the requirements of the law, and certainly, it is shocking to find out today there is not the kind of cooperation and integration of operations that is necessary.

As I understand, the whole purpose of the strike force was to bring together the differing Federal Government units, together in one effort to effectively attack organized crime, and so it is a matter of real concern to the subcommittee that not only does there seem to be a failure of cooperation between the Labor Department and the Justice Department, but between the Justice Department and FBI.

There is nothing new, as I said in my opening statement, about the turf battle. It has been going on for as long as I have been here.

But we are not satisfied, and I think this is, in many ways, as you said earlier, the most shocking aspect of the situation.

I can guarantee that together, we will pursue this matter and make certain that something is done to get the kind of cooperation that is necessary, not only to be effective in the attack on organized crime, but something that is important from the standpoint of the public at home to have confidence in our people responsible for law enforcement.

So I strongly agree with what you say, Senator Nunn.

Senator Nunn. Thank you.

Chairman Roth. Mr. Maria, would you start with your statement?

TESTIMONY OF RAYMOND MARIA, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF LABOR, ACCOMPANIED BY ROBERT MAGEE, FORMER ACTING INSPECTOR GENERAL, DEPARTMENT OF LABOR, AND DAVID WILLIAMS, DIRECTOR OF FIELD OPERATIONS, OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF LABOR

Mr. Maria. Yes, I will. Mr. Chairman, members of the subcommitte, I am pleased to be able to appear before you today. I am Deputy Inspector General at the U.S. Department of Labor. Also appearing with me this morning on my right is Mr. David Williams, who is the Director of Field Operations in the Inspector General's Office of Labor Racketeering, and on my left is Mr. Robert Magee, who served as the Acting Inspector General for the Department of Labor from October 1982 through March 1983.

Prior to assuming my position in February 1984, I served as an agent with the Federal Bureau of Investigation for approximately 15 years. During this period, it was my honor to be detailed to the staff of this subcommittee during your investigation of labor corruption and organized crime influence on the waterfront.

Those hearings brought to light many of the problems associated with labor racketeering on the waterfront. It is a pleasure to see many of my friends and associates with whom I worked during the course of that detail. In addition to my other duties as Deputy Inspector General, under the direction of Inspector General Hyland, I also head our Office of Labor Racketeering, which has as its primary mission the detection and reduction of labor racketeering activity by traditional and emerging criminal groups within the areas of employee benefit plans, labor-management relations, and internal union affairs.

It is my understanding that the purpose of this hearing is to investigate the Government's handling of the investigation of Jackie Presser, the president of the International Brotherhood of Teamsters, and others, specifically, with respect to allegations of the employment of so-called ghostworkers.

Mr. Chairman, as you are aware, this is a matter under open investigation, which is the subject of grand jury deliberations. Therefore, I must respectfully decline to respond to any questions regarding the specifics of this investigation or of any other open investigation. I would be pleased to discuss the overall administration and procedures of the Office of Inspector General and any other relevant areas which are of concern to you.

I am sure that you share our concern that our discussions today do not in any way jeopardize any ongoing investigations or compromise the rights of any affected individuals.

Chairman Roth. Thank you, Mr. Maria. What we will do is, I believe, Mr. Magee, you have a prepared statement, and then we will open to questions. You do not have a prepared statement, Mr. Williams?

Mr. Williams. That's correct, Mr. Chairman, I do not.

Mr. Magee. Thank you, Mr. Chairman. I have a brief statement the subcommittee staff has asked me to read into the record. The prepared statement includes references to my work history, which was considered relevant to the assessments I made of matters which came to my attention in 1983.

Mr. Chairman, Senators, and members of the staff, I am pleased to be here today. On April 1, 1983, I left government service as Acting Inspector General of the Department of Labor, which position I had held since September 1982 upon the resignation of Inspector General Thomas McBride. My responsibilities in that position included the oversight and management of all activities of the Office of Inspector General and, in particular, the separate element then known as the Office of Organized Crime and Racketeering, which is now called the labor racketeering seciton, I believe, of the Department of Labor's Office of Inspector General.

Prior to joining the Department of Labor in December 1981 as Deputy Inspector General, I was the Assistant Inspector General for Investigations at the Department of Agriculture's Office of the Insepctor General where, since 1966, I had occupied various supervisory and management positions in criminal investigations.

In 1966, I had retired from the U.S. Army as a lieutenant colonel in the military police corps. Much of my Army service was in the criminal investigation division. As a result, I have been almost exclusively involved in criminal investigation management activity for about 33 years when these events transpired.

I am here today at your invitation to describe my involvement with the Cleveland Office of Inspector General's investigation of Local Union 507 and Bakers Union Local 19, commonly referred to as ghostworkers investigations. In 1981, upon my arrival at the Department of Labor, I became aware of this and other investigations then underway by this unit. Not until December 1982 did I become personally aware of the problems with the investigation.

At that time, two incidents occurred in quick succession. In December 1982, counsel for Jackie Presser wrote a lengthy letter to a number of Government officials, including the Attorney General, the Director of the Federal Bureau of Investigation, the Secretary of Labor and to me accusing the Labor Department of conducting a vendetta regarding Mr. Presser and alleging misconduct on the part of the investigating agents.

The following month, January 1983, the special agent in charge in Cleveland, Dave Williams, here, reported a series of events involving agents of the FBI in Cleveland which were creating obstacles to the orderly completion of our investigation.

I found these events unusual enough and serious enough to bring them to the attention of operating officials of the Department of Justice to determine what action might be appropriate.

In separate meetings on February 7, 1983, I met with Dave Margolis and Paul Coffey. I told them that the circumstances that had been told to me about FBI activity in Cleveland appeared to me to be contrary to professional investigative behavior. I had to conclude that their intention was to disrupt our investigation. I also felt that the FBI actions unfairly raised questions concerning the conduct of the Office of Inspector General agents assigned to the investigation. And I was primarily determined to resolve this issue before I left office.

Dave Margolis was on detail to the Vice President's Narcotics Task Force and did not indicate he was aware of these issues. Margolis recommended that I talk to his deputy in the organized crime section, Paul Coffey, about these concerns.

Paul Coffey told me he had been informed by the Cleveland Strike Force of FBI allegations concerning Labor Department agents and that neither he nor strike force attorney in charge, Steven Olah, placed any credence in them. My discussion with Coffey did not disclose any reasons for the FBI's actions. Coffey assured me that the investigation was proceeding and that the determination with regard to returning an indictment would be based upon the final prosecutive recommendations of the Cleveland strike force.

I left this meeting satisfied that I had presented my concerns to the appropriate authority and that the investigation would proceed. Six weeks later, on April 1, I retired from Government service and have had no further contact with this investigation or the current proceedings.

This completes my prepared statement, Mr. Chairman, and I will be pleased to answer any questions.

Chairman ROTH. Mr. Maria, when you became Deputy Inspector General, did you have an opportunity to review the Department of Labor cases filed on ghostworker investigations?

Mr. MARIA. Yes, Senator. I reviewed the case, as I did all of the cases that were identified for me as significant matters within our inventory at that point in time, and I received oral briefings on that case, as well as others.

Chairman ROTH. What was the status of the ghostworkers investigation? What was your assessment of the case, and what importance did the Department of Labor attach to it?

Mr. MARIA. The period of time would have been February-March of 1984, and with respect to the case, by any standard, it was a material, significant investigative endeavor. In attempting to determine its status within the prosecutorial system, I was told in March 1984 by the Cleveland strike force, as well as by my own investigative colleagues, that investigation was substantially complete to the point where the prosecution memorandum was being prepared and would be forwarded to the organized crime and racketeering section of the Department of Justice.

I was told that they expected this document to be prepared and submitted to Justice by the end of April 1984. I was specifically requested by my superior, Mr. Hyland, to inquire as to the status, because he had been told in November 1983 that the investigation had been completed and that the prosecution memorandum would be submitted to Justice by the end of that calendar year.

Chairman ROTH. What kind of priority did the Department of Justice give this investigation? What is your opinion?

Mr. MARIA. In my opinion?

Chairman ROTH. Yes.

Mr. MARIA. The Department of Justice did not attach the same priority to that investigation that the Department of Labor did. I had serious questions about the degree of continuous prosecutorial support being afforded that investigation, which, I repeat, was major and significant by any standard.

Chairman ROTH. Again, let me repeat the question, you say it did not get the same degree. Do you mean less, more, or what importance?

Mr. MARIA. Rather than beg the question, let me just say that I was concerned with what I considered to be lack of progress, lack of prosecutorial pace.

Chairman ROTH. Why was that? Was this priority problem, in your judgment, caused by the Cleveland strike force or by the Department of Justice headquarters?

Senator NUNN. Mr. Chairman, I think we ought to ask Mr. Maria his personal opinion in this regard.

Chairman ROTH. I think I did say that.

Senator NUNN. I think it ought to be clear. I think you did make that clear. We want his unvarnished view here.

Mr. MARIA. Senator, I'm not certain we will ever know why it took so long. That is my personal opinion.

But in terms of trying to implement my management strategies, I find it necessary, and I think it is a sound practice, well-established practice, to establish timeframes for anything that we attempt within our investigative program. Cases and projects shouldn't take on a life of their own. And to that end, I again became concerned when the promised document was, in fact, not forthcoming.

I visited Cleveland again in early summer, I believe it was June 1984, and was told again that the investigation was complete; that, in fact, a prosecution memo would be prepared and submitted to the organized crime and racketeering section at the Department of Justice.

That was not the case.

Chairman ROTH. Did the Department of Justice stop providing the IG personnel with information on the status of the ghostworkers case?

Mr. MARIA. In approximately January or February of 1985, I learned that the prosecution memorandum had, in fact, been completed; that it would be examined at the organized crime and racketeering section of the Department of Justice. But a decision had been made to communicate only with the Inspector General, Brian Hyland, and there would be no communication from the Department of Justice personnel to either me or anyone else in the Office of Labor Racketeering that had been involved in that case.

Chairman ROTH. Let me ask you what was your reaction? What effect did this have?

Mr. MARIA. If I may just continue, I was told that these measures were taken because of the Department's concern with what they considered to be a spate of unauthorized disclosures to the news media regarding the subjects of investigation. My reaction was one of profound personal and professional disappointment.

I have been in this business, at that point in time, for over 15 years, and I have never been excluded from the flow of information regarding cases of any consequence in which I or my colleagues have been involved. I think it is ironic to find out that after the operational staff was excluded from the "flow of information and the concern over problems that were identified, allegedly identified during the review of this prosecution memorandum," I think it is ironic that the news speculation and news articles seemed to increase in volume.

Chairman ROTH. Let me ask one more question, and then I am going to refer to Senator Nunn to proceed.

Let me ask you this question: Are the circumstances of this investigation unique, or has there been a continuing problem between OIG and the Department of Justice?

Mr. MARIA. Senator, in terms of problems could you be specific?

Chairman ROTH. What kind of coordination and cooperation do you find existing in other cases between the two departments?

Mr. MARIA. In my opinion, what we are talking about here today, Senator, is a symptom of a larger problem. We are not talking about a case that is peculiar to just the relationship between or among agencies in Cleveland, OH. In my personal opinion, the state of cooperation that should exist needs substantial, substantial improvement.

We talk about organized crime. I think it is ironic that they never talk about organized law enforcement. What we have is a splintered effort in a diminishing budget environment. I think it is our obligation to get the biggest bang we can out of every dollar we spend in the area of labor racketeering enforcement.

But unless there is some type of cohesive planning and approach at the outset, some common understanding of what it is we want to accomplish, how we intend to get there, and who will have what investigative assignments, that won't be done.

Everybody is marching to the beat of a parochial drum.

Chairman ROTH. In other words, are you saying that since you were sort of the "new boy on the block," this is a turf battle, that the Justice Department is not interested in the Department of Labor becoming involved in the investigative aspects of these cases?

Mr. MARIA. I couldn't generalize. In some cases, we have received excellent support; in other areas of the country, the support has been less than desirable.

Chairman ROTH. Senator Nunn.

Senator NUNN. Going ahead and pursuing this, and let me just say that I am asking your personal opinion in all these questions, how would you describe the relationship between the Cleveland FBI office and the Office of Inspector General there?

Mr. MARIA. Perhaps it is a good idea that we don't have weapons today. [Laughter]. Confrontational.

Senator NUNN. I think the witness has just spoiled my next 10 questions, Mr. Chairman. [Laughter].

Could you tell us whether this is typical of your Office's relationship with the FBI throughout the country, or is this a particularly bad relationship in the Cleveland area?

Mr. MARIA. Senator, I think we are dealing with a larger problem. I am especially concerned about what I consider to be a lack of a coordinated, comprehensive effort toward labor racketeering. I think the situation needs dramatic improvement in Cleveland, in New York, in Miami, and in Philadelphia. Those are the cities where, incidentally, the Department of Labor has its largest commitment of resources because of the identified labor racketeering potential.

But we don't have the kind of joint planning that should go on in terms of determining what it is the Government should pursue from an investigative standpoint.

Senator **Nunn**. Where should that joint planning occur, at what level?

Mr. **Maria**. It should occur at a high management level in those areas in which the Department of Labor—in those geographical areas in which the Department of Labor and the FBI have common representation, and it also should occur at the headquarters level in terms of general concepts in establishing parameters as to the thrust and nature of a given investigative program.

Senator **Nunn**. So you are saying that the problem is lack of coordination both in Washington at high levels and in the field at high levels, both?

Mr. **Maria**. Correct, Senator.

Senator **Nunn**. Has your Department taken any initative to try to create that kind of coordination at the high levels here in Washington?

Mr. **Maria**. Yes, we have.

Senator **Nunn**. Could you tell us generally what and when?

Mr. **Maria**. My office has met with the FBI in an effort to arrive at what the Government refers to as a memorandum of understanding. I like to think of it as a partnership agreement with the emphasis on partner, partners of equal status.

What we have attempted to do is establish a working agreement so that we can have common understanding as to how we can effectively plan a cohesive enforcement function. That process was initiated in the fall of 1984. Numerous drafts have been prepared, and as yet, there has been no agreement reached as to what the document should be.

Senator **Nunn**. Are you meeting with the FBI? Are you having meetings, or is it a paper flow exhange?

Mr. **Maria**. The last meeting occurred a number of months ago and was based upon their concerns about investigative jurisdiction.

Senator **Nunn**. What are those concerns about investigative jurisdiction that the FBI has?

Mr. **Maria**. You want my opinion?

Senator **Nunn**. Yes, your personal opinion.

Mr. **Maria**. I believe they're preoccupied with the desire to have an enunciation of a broad list of investigative violations to which the FBI exclusively would be responsible. I take issue with that interpretation, and I think my objection is well founded. I believe that we exercise properly within our mandate, and I talk about the Department of Labor and the Office of Labor Racketeering, to detect and investigate labor racketeering in its broadest forms, the full spectrum. We are emphasizing substance; we are not emphasizing form as to who has what violation.

The focus should be on detecting criminal actions, on determining how revenue is being generated by those who would abuse and compromise the labor movement. To try to put a violation foremost in your investigative planning, as I said, emphasizes form over substance. The emphasis should be on determining what the activity is. No one knows how a prosecutor ultimately may decide to charge a given activity. That goes into the realm of prosecutional discretion, and in my experience, it is not uncommon for a prosecutor to have the option of charging a particular activity any one of half a dozen different ways, depending on the facts and circumstances of the case.

It doesn't make sense to emphasize who has what jurisdiction, especially when I think the Congress has spoken on more than one occasion.

Senator NUNN. Let me shift back to this *Presser* case, and then I will get back to this general subject. On the *Presser* case, and I am speaking now of the ghostworker case, Mr. Maria, did you see any political influence exercised in this case?

Mr. MARIA. None whatsoever.

Senator NUNN. You never felt political pressure?

Mr. MARIA. No; I did not.

Senator NUNN. From people in Labor Department or from people in other agencies of Government?

Mr. MARIA. If there were, I was unaware of them.

Senator NUNN. And from the White House, did you feel any political pressure from the White house?

Mr. MARIA. None.

Senator NUNN. How about other Presser-related cases? Are you familiar with others beyond this ghostworker series of allegations?

Mr. MARIA. Only in a remote, hearsay sense, Senator.

Senator NUNN. Do you know, of your own knowledge, of any political influence in those cases?

Mr. MARIA. No, I do not.

Senator NUNN. Getting back to the broader subject, which I do think is the heart of this hearing, what restrictions are placed on the Labor Department's criminal enforcement jurisdiction by the current memorandum of understanding between Justice and Labor?

Mr. MARIA. There are essentially two memoranda of understanding: One dated 1960, which speaks to the issue of what the Department of Labor would do with respect to enforcing the Landrum-Griffin Act, and then the memorandum of 1975 between the Secretary of Labor and the Attorney General dealing with the criminal provisions of ERISA.

And essentially, both of those memoranda provide that criminal violations of ERISA would be referred to the Department of Justice, specifically, the FBI. The Department of Labor would not become involved in criminal enforcement with regard to those two, with regard to ERISA and Landrum-Griffin, except in those situations when the Department wanted to redelegate investigative authority back to the Secretary of Labor.

Senator NUNN. When were these memoranda put into effect?

Mr. MARIA. In 1960 and in 1975.

Senator NUNN. Do you believe they are now up-to-date, considering the fact that there have been laws passed since then?

Mr. MARIA. They are outdated, superseded; they're obsolete. Those memoranda were prepared prior to the creation of the office which I represent, which evolved in 1978, and then they have been, I believe, superseded by the Labor Racketeering Amendments of 1984, which speak to, specifically, to the jurisdiction of the Secretary of Labor in terms of enforcing the criminal provisions of certain Labor statutes.

Senator **Nunn**. Would it be fair to say that these memoranda of understanding really contradict the law that was passed in 1984; is that your statement?

Mr. **Maria**. I believe that is a fair statement.

Senator **Nunn**. That is not too strong a statement?

Mr. **Maria**. Not for my taste.

Senator **Nunn**. Has your department tried to get cooperation in revising and updating those memoranda of understanding?

Mr. **Maria**. The Office of Inspector General has made that recommendation to the Secretary of Labor.

Senator **Nunn**. Has the Secretary of Labor pursued that?

Mr. **Maria**. It is my understanding that that is being considered.

Senator **Nunn**. At the Secretary of Labor's level, or have they started discussions with Justice?

Mr. **Maria**. Within the Department of Labor.

Senator **Nunn**. Within the Department of Labor. So the Department of Labor has not yet moved on that point?

Mr. **Maria**. Correct.

Senator **Nunn**. When did you office make the recommendation?

Mr. **Maria**. That would have been made shortly after October 1984, which signaled the passage of the labor racketeering amendments.

Senator **Nunn**. Mr. Chairman, my time has expired. I have some other questions, but we can go back and forth on them.

Chairman **Roth**. Yes. It seems to me, listening to your testimony and reading the staff report, that we have more than one problem here, you have the basic problem of allocation of responsibility or a memorandum of agreement based on recent law, but you also have a problem of personnel, perhaps at every level, cooperating.

In other words, what I am concerned about, and let's assume we go ahead and get a refinement of the memorandum of agreement. I strongly agree with what Senator Nunn has said as to the need. I suspect that Secretary Brock, having recently taken over, may not have had an opportunity to consider it yet.

[At this point, Senator Nunn withdrew from the hearing room.]

Chairman **Roth**. But in any event, whatever the answer to that be, is the problem deeper than that? Do you think the issuance of a new memorandum of agreement will solve the problem, or is there a serious problem at every level of, say, your department and the FBI?

Do you think the men in the field, the FBI agent in the field, would agree to a division, or do you think there would be some turf battle at that level?

Mr. **Maria**. You can prepare all the documents in the world mandating what should go on in field operations. You can prepare them with every lofty intent in Washington. The real issue is, how will they be interpreted, implemented in the field operational setting.

I think it is a question of having strong, sincere policy commitments at the highest level of both agencies, demonstrating that we have, "we" meaning those people in the enforcement community, have a vested interest in producing the best possible service. You need a strong, strong policy commitment and articulation at a very high level.

The Department of Labor, bear in mind, with its Office of Labor Racketeering, has only 94 special agents to implement a national program. It has done so aggressively and in a most commendable fashion. The results of our program efforts are second to none today.

I am willing, when I leave here, to embark upon a joint planning process with the FBI with the understanding that we do it as full partners and with the understanding that we are investigating labor racketeering in its broadest material sense, that I am not restricted to playing the role of a second-class investigative citizen.

I have had an opportunity to review, over the last 2 years, the quality and thrust of our program. I find it humiliating to be treated in a patronizing, condescending fashion. This record speaks for itself, and for the record, I would be happy to provide for you a detailed listing of what this office has accomplished in response to prior and well-justified Senate concern and criticism.

It is a program that works, works effectively. We provide the taxpayer, and I am here to say it as accurately as I can, we provide the taxpayer with the best responsible return on this investment in the area of labor racketeering, with 94 agents, with a budget of under $6 million.

Chairman ROTH. Let me ask you. You have discussed the problem between yourself and the FBI. In the strike force, as I understand it, you have other agencies, as well. Of course, you have the Department of Justice involved, I guess Customs, Treasury, and others can become involved.

What kind of cooperation do you find with respect to these other bureaus?

Mr. MARIA. I would say that by and large, we experience the most significant, meaningful cooperation with the Internal Revenue Service, primarily because of, I would think, similar approaches that we take toward the investigative process. We view labor racketeering as having evolved from knuckle-dragging and strongarm tactics to what we see to be sophisticated financial crime. We are talking about bidriggings; we are talking about kickbacks; we are talking about conflicts of interest.

[At this point, Senator Nunn entered the hearing room.]

Mr. MARIA. That is what labor racketeering is.

I don't intend to imply that every—that relationships with the Bureau are abysmal or poor across the board. That is not the case. There are certain exceptions. But it is a problem, a serious problem.

Chairman ROTH. I also understand that the problem is very substantial, not only as to the division of responsibility, but, in your opinion, at the working level; that one of the real problems is going to be, even if you reach agreement at the top side, how you implement it, how you get the full partisan support and cooperation from the agents in the field, and that is where it makes the big difference; isn't that correct?

Mr. MARIA. It would be difficult, but I can tell you, without qualification, that those 94 people that are under the charge of myself and Mr. Williams will do precisely what we ask them to do. When you are small and you have 94 people, you can't live as an island. We have to leverage the limited resources that we have. We, by necessity, work with the Internal Revenue Service. We, by necessity, work with the State and local authorities.

We have to borrow their equipment. We have cars to conduct surveillances, but we don't have radios in our cars.

Chairman Roth. Senator Nunn.

Senator Nunn. Just a couple more questions to Mr. Maria, Mr. Chairman.

Mr. Maria, how critical to your efforts against labor racketeering is the lack of law enforcement authority for Labor agents, which is the subject you were just alluding to?

[At this point, Chairman Roth withdrew from the hearing room.]

Mr. Maria. Senator, it is a serious impediment. If this office is, in fact, expected to discharge a literal law enforcement function in the area of labor racketeering, law enforcement authority is essential.

Senator Nunn [presiding]. Tell us why. What is it that you don't have, and why?

Mr. Maria. The potential for violence is inherent in virtually all labor racketeering investigations. That is a given. Of paramount importance in conducting investigations is the ability to protect third parties, those who would cooperate with us in terms of gathering information and wearing body recorders to assist us in gathering evidence.

We have a clear responsibility to protect them. Right now, we are capable of doing that or protecting the welfare of the agents engaged in these day-to-day investigations.

Senator Nunn. Is it pretty well known in circumstances where you would be investigating labor racketeering, is it pretty well known that Labor Department investigators don't have law enforcement authority?

Mr. Maria. Widely known.

Senator Nunn. Is the comment that we heard earlier this morning by Mr. Nardi about FBI agents saying that Labor Department agents were essentially clowns, that they didn't even get to carry guns, is that anything you have heard before?

Mr. Maria. On more than one occasion, yes.

Senator Nunn. From other Federal agents?

Mr. Maria. Other Federal agents; other members of the law enforcement community. It is a question not only of needing that authority to discharge the responsibility. The other issue, and a significant one, difficult one to measure, but if you are in the business, you will understand what I am talking about, goes to the issue of credibility, how you are treated in that community in which you must function. When you are in the garment industry, when you are in the shipping industry, are you viewed as a credible, first-line law enforcement officer?

[At this point, Chairman Roth entered the hearing room.]

Mr. Maria. What incentive is there for me, as a businessman, who could be subjected to violence and economic harm? Why should I cooperate with someone who isn't even perceived to be, by the Federal Government, a legitimate law enforcement officer?

Senator NUNN. On a scale of 1 to 10, in terms of the effectiveness of your Department in labor racketeering cases, how important is law enforcement authority, with 10 being the highest and 1 being the lowest?

Mr. MARIA. Ten.

Senator NUNN. You mentioned in some instances you have chosen to take Labor Department cases to the U.S. Attorney's Office rather than the Strike Forces for prosecution. Why is that?

Mr. MARIA. For a number of reasons. In certain areas of the country, the Strike Force has been unable to provide us with the continuous or timely prosecutorial support necessary for certain program intiatives. What we are dealing with has a shelf life.

We invest in a substantial amount of time and money in producing an investigative product. Unlike fine wine, it doesn't get better with age. You must act on these things

In those instances, rather than use the strike force, we have gone to the U.S. attorney. For another reason, we also use the office of the U.S. attorney now because of the larger number of resources that those offices generally have available to them and their ability to provide for a quicker turnaround with regard to recommendation of prosecution and initiating the prosecutive function.

We have adopted a broader definition of racketeering activity than that traditionally embraced by the Organized Crime and Racketeering Section of the Department of Justice.

I think we are running out of first and second generation ethnic stereotypes. What we are dealing with, I think, is a new generation of racketeers. We are looking at investment counselors, attorneys, accountants, benefit plan administrators. We are looking at, really, economic and financial crime in a very broad and sophisticated sense.

I might add, we have had excellent support from major U.S. attorneys offices in Chicago, in New York, and in Newark.

Senator NUNN. Mr. Chairman, I think the light has gone off on my time. I have some questions, I think we probably both do, of Mr. Magee, but I don't have any other questions for Mr. Maria.

Chairman ROTH. Mr. Rinzel, would you proceed with questions of Mr. Williams?

Mr. RINZEL. Mr. Williams, I wonder if you could give the subcommittee a brief description of your employment background and where you currently are employed.

Mr. WILLIAMS. I began Government service in 1975 as a special agent with the U.S. Secret Service. In 1979, I transferred to the Office of Labor Racketeering in the Chicago Field Office, where I eventually became a supervisory special agent.

In 1981, I transferred to Cleveland, OH, where I was the special agent in charge, and I remained there until the winter of 1983, when I became the special agent in charge of New York City. About a year later, I was detailed to become a Staff Investigator for the President's Commission on Organized Crime, where I remained until the winter of 1985. At that time, I became the Director of Field Operations for the Office of Labor Racketeering.

Mr. RINZEL. We understand that you were in charge of the Cleveland Field Office of the Labor Department during the bulk of the ghostworkers investigation in Cleveland; is that correct?

Mr. **Williams**. Yes; that's right.

Mr. **Rinzel**. How would you describe the relationship between the Department of Labor office in Cleveland and the FBI office in Cleveland during that period of time?

Mr. **Williams**. They were extremely bad. By the time of my transfer, they could not have been worse. They continuously disintegrated as we moved in closer and closer on Jackie Presser.

Mr. **Rinzel**. Did your office ever attempt to obtain information from the FBI in Cleveland relating to the ghostworkers investigation?

Mr. **Williams**. Yes; we did.

Mr. **Rinzel**. Did any people from your office have a meeting at one point with the Special Agent in Charge Joe Griffin of the FBI?

Mr. **Williams**. Yes; they did.

Mr. **Rinzel**. What happened at that meeting?

Mr. **Williams**. Shortly after the investigation was initiated, the labor squad leader at the FBI telephoned Special Agent Jim Thomas of my office and asked him to come over. He said he was aware that we had just opened an investigation of Jackie Presser, and that he had valuable information that could assist in the investigation and possibly, we could work together.

Mr. **Rinzel**. That was Griffin who said that?

Mr. **Williams**. That was Rick Lind, who was the head of the labor squad in Cleveland.

Mr. **Rinzel**. For the FBI?

Mr. **Williams**. For the FBI, that is correct.

Mr. **Rinzel**. What happened at the meeting?

Mr. **Williams**. Special Agent Jim Thomas and Red Simmons responded, went over to meet with Agent Lind. Agent Lind immediately, upon their arrival, ushered them into Special Agent in Charge Joseph Griffin's office. Special Agent Griffin asked them to sit down and explain about the Office of Labor Racketeering's investigation of the Teamsters. At the completion of our explanation of what we were investigating in Jackie Presser's IBT Local 507, and Bakery Workers Local 19, he exibited a keen interest in any information we would provide regarding gifts and other things of value being given to FBI agents by Presser.

Mr. **Rinzel**. Did the FBI in Cleveland ever provide any of the information that they had indicated to you they would provide?

Mr. **Williams**. No. At the close of that meeting, the two agents were ushered back out. No information, as had been promised, was provided. We later asked them for information about Jackie Presser. They indicated that they would give it to us.

When that didn't come forward, we sent a letter to them, and to date, they have not provided information to us.

Mr. **Rinzel**. Did you raise this problem of cooperation with any of the Department of Justice personnel in Cleveland?

Mr. **Williams**. Yes. I spoke regularly with the strike force chief and with the case attorney.

Mr. **Rinzel**. That was Steve Olah, the strike force chief?

Mr. **Williams**. Steve Olah is the strike force chief, Steve Jigger and Steve Canfield were the attorneys working in the investigation.

Mr. RINZEL. What, if anything, did Olah try to do about this problem?

Mr. WILLIAMS. At the point, he had met with Joe Griffin. I believe he asked the FBI to join the investigation, and they declined to do so.

He asked me at one point to meet with the FBI agents and give our entire case inventory to them, at which point they would explain their inventory to us and we would work together from that time on.

Mr. RINZEL. I take it he, Olah, made some efforts to try to improve the relationship between the FBI and the Labor Department in Cleveland?

Mr. WILLIAMS. Yes; he did. That was more or less a constant concern for him.

Mr. RINZEL. Did you report any of these difficulties to any of your superiors in the Labor Department?

Mr. WILLIAMS. Yes; I did. A critical point was reached in the fall of 1982. The majority of the investigation was complete, and we began to detect a major counterattack on the part of the Teamsters, and unfortunately, on the part of some FBI agents, to stop the investigation and to gather derogatory information on the agents that had gathered the evidence.

I began reporting that to my supervisors. We spoke daily during the early winter months of 1982 and 1983.

Mr. RINZEL. Was Mr. Magee among your supervisors at that time?

Mr. WILLIAMS. Yes; he was. Mr. Magee was the acting inspector general. I would have reported to the Director of Field Operations, who would have reported to Mr. Magee.

Mr. RINZEL. I have no further questions for this witness.

Chairman ROTH. Thank you.

Senator Nunn.

Senator NUNN. Mr. Chairman, I have some questions of Mr. Magee here. Mr. Magee has been helpful in previous testimony before this subcommittee, and we appreciate him being here very much.

I want to go through, Mr. Magee, a few details to amplify what you have already testified to.

You mentioned you brought certain concerns to the Justice Department's attention in this overall area. Could you give us what your concerns were and what you did bring to the Justice Department's attention in terms of the Presser investigation?

Mr. MAGEE. Yes, Senator, tying into Dave Williams' last comment, I was brought into this matter through a report by Dave Williams to the Washington headquarters in January 1983, which summarized a number of incidents he cataloged over the years that represented to him acts of overt obstruction or interference by the FBI in Cleveland with the Labor Department investigation.

The first incident was the one that he describes and that I will not repeat; that is, the summer of 1981, the Labor Department agents being invited by what appeared to be a ruse to the FBI offices to receive helpful information and instead, finding themselves interrogated by the special agent in charge on the scope and thrust of their investigation which, in fact, was a predecessor investigation of what became the ghostworkers investigation in early 1982.

Mr. Williams also had reported that in January 1982, a special agent supervisor of the FBI asked an FBI agent, who he knew to be a personal friend of Labor Agent Jim Thomas, to use this friendship to monitor the progress of the Presser investigation and report this progress to him.

It was also reported that in February 1982, another FBI agent approached an OIG witness, a source, and commented that, "We understand you have been talking to Jim Thomas." And some time thereafter, that same source advised that he was approached by two associates of Jackie Presser who threatened him, if he continued to cooperate with the Labor Department agents.

Finally, in October 1982, following the Labor Department execution of a search warrant on the premises of the union offices, previously described by subcommittee staff, it was reported that the SAC, the special agent in charge of the FBI, complained to Strike Force Chief Olah that he had not been briefed, and Olah responded that the operation was on a need-to-know basis and that is why the FBI was not briefed, they were not involved.

Then in December 1982, as I mentioned in my prepared statement, counsel for Jackie Presser disseminated a lengthy letter to a number of Washington officials attacking the motives and the integrity of the Labor Department agents and the strike force attorneys in what he termed a vendetta against Jackie Presser. Two curious things happened that same month in this litany of matters that occurred and that Mr. Williams reported to me.

It was reported that on December 9, 1982, Mr. Climaco, the counsel for Jackie Presser, accompanied by Mr. Joyce, a Presser associate, appeared in the FBI offices in Cleveland supplying information that a Labor Department witness in the ghostworkers investigation might recant his testimony for compensation, and you heard from a previous witness today the details of that.

The next day, December 10, 1982, the FBI initiated an investigation, sending Mr. Presser's associate with an FBI agent to Florida to interview this Labor Department witness. It was reported that the FBI asked Strike Force Chief Olah not to tell the Department of Labor agents about this visit, but he did, of course.

Then the next month, in January 1983, while one of the initial prosecutor memorandums was being drafted in Cleveland, it was reported that the FBI special agent in charge complained to the strike force chief that the Department of Labor had no authority to investigate labor racketeering and if the strike force continued to handle Labor Department cases, the FBI might take their cases to the U.S. Attorney.

Still in the same month, there were several conflicting and unexplainable events that occurred in connection with the FBI's investigation of this witness, who had allegedly offered to recant his testimony. The FBI first suggested an arrest, but then they backed off when Strike Force Chief Olah insisted that Labor Department agents be present and interview the individual following arrest. The FBI then advised Olah that their West Palm Beach office could not find agents in Florida to make an arrest. The FBI then said that the matter had low priority, although they had already flown an FBI agent and Mr. Joyce to Florida for the purpose of interviewing this witness.

The FBI then told Mr. Olah that the special agent in charge would not forward the Federal warrant to Florida until he had evidence that this witness was still in the State. Finally, when the witness was arrested by local authorities on a State warrant, the FBI did not inform the Department of Labor, and they did not inform the strike force.

Still in January 1983, all of these events being compiled by Mr. Williams in his report to me, the FBI, contrary to Mr. Olah's instruction that only Labor Department agents interview Nardi in Florida, sent another agent to Florida to interview the witness. The FBI agent interviewed the witness for a brief period of time concerning the recent offer, but then reportedly interviewed the individual for over 2 hours trying to draw out allegations of misconduct on the part of the two investigative Labor Department agents.

FBI agents, shortly thereafter, told Mr. Olah that a "302," an internal FBI interview/report type form, would be prepared regarding these allegations against the Labor Department agents. Mr. Olah reportedly asked what would be done with this "302," and the agent reportedly responded, "That depends on what happens from here on out."

The next day or so, the same FBI agent contacted Olah, asking Olah how he would like it if the FBI suppressed the "302." These events, when presented to me and considered by me in their entirety, left me no conclusion, no conclusion at all, other than that the FBI was intentionally and seriously attempting to disrupt the Labor Department investigation and prevent an indictment of Jackie Presser.

I couldn't conceive of any valid reason for it. I couldn't understand it, particularly since our investigation had been under the full coordination of the Department of Justice strike force in Cleveland. These are the specifics that I took with me and discussed with Mr. Margolis and Mr. Coffey on February 7, 1983.

Senator NUNN. Did you contemplate the possibility of going to the FBI directly rather than to the Justice Department?

Mr. MAGEE. Very briefly, Senator, and I should tell you why, because that was a logical step. It had to do with the climate, the environment. And I might say, I am depressed but not really surprised to come back to Washington after 3 years and listen to my successor, Mr. Maria, describe events that sound to me like the events that I experienced in 1982 and 1983.

But I had concerns about that. First of all, I, at that point, had been refusing to sign a memorandum of understanding with the FBI, a memorandum of understanding that grew out of the creation of the Inspector General offices. The FBI was quite properly executing a memorandum of understanding with each separate Inspector General office.

The problem at Labor, and one of the reasons I felt reluctant to confront the FBI in Washington at this time, was that the FBI, and I might say, some officials in the Department of Justice, and I, following up on former Inspector General Tom McBride's strong feelings, had fundamental disagreements on the role of the Labor Department investigative element. On our end, our feeling was that we should do exactly what we had been doing and do it as well as Mr. Maria has said they have done it, to carry out the will of Congress, which was expressed in the 1978 hearings before this same committee.

The FBI and some officials of the Department of Justice quite candidly repeated more than once to me, both in Washington and at various strike force location offices, that the appropriate role for Department of Labor investigators was to essentially conduct examinations of the books and records of unions as a support function for some other agency, ergo, an FBI investigation. I was unwilling to agree to any action that would return us to the state prior to 1978 and, as Mr. Maria said, to relegate Labor Department agents to be assistants or technicians in someone else's investigation.

Not only that, there were hearings pending or ongoing in February 1983 before this subcommittee and before Senator Hatch's committee, and the Presser investigation was ongoing. It was my judgment that to confront the FBI at that time would probably not resolve the issue but might exacerbate or prejudice any of these other situations which were extant at that time; I also concluded that since, as Senator Rudman said earlier, I was under the impression that the FBI was a subordinate agency of the Attorney General and the Justice Department, and since the investigation in Cleveland had come under the constant direction of Justice Department attorneys, that the proper place for me to go initially was to the organized crime and racketeering section of the Department of Justice.

Senator NUNN. Did you feel that you had resolved the problem when you did meet with the Justice Department?

Mr. MAGEE. Partly, Senator. I had a twofold motive, as I mentioned in my statement. I was very concerned about the allegations of impropriety against the Department of Labor agents. I wanted to nail down and dispose of this matter one way or the other before I left office and not leave it to any successor to grapple with.

I was satisfied in that respect, because Mr. Coffey told me that neither he nor Olah placed any credence in the allegations. The allegations were somewhere in the area slightly above ridiculous in my professional judgment.

So I was content that I was able to issue a memorandum to the Cleveland office and to the file absolving these agents of any impropriety. I was somewhat assured by my conversation with Mr. Coffey that the investigation was still ongoing; that no adverse decision had been reached; and that any decision would rest upon a final prosecutor memorandum. So I left, at least with an assurance that the investigation had not been "deep-sixed" at that point.

I, of course, was not satisfied in terms of my confusion and my apprehension over the specter of one Federal agency obviously undertaking to undermine the investigative efforts of another agency, particularly at the behest of or based upon information furnished by counsel for a target of the Labor investigation. I had no answer to that whatever, and I do not have one today.

Senator NUNN. Do you have any recommendations you would like to make to the subcommitte now, Mr. Magee, based on your past experience and what you know about this case?

Mr. **Magee**. I listened, with some admiration, to Ray Maria offer his analysis of what needs to be done and how it should be done, and I want to say that I endorse that without reservation. I think my concern, and the foundation for any recommendation, has to be my personal resentment and the resentment of these gentlemen at the table that the Labor Department was permitted to continue to expend thousands of man hours and dollars and all kinds of other resource items when somebody in the Federal Government had knowledge that there had been circumstances that were going to jeopardize all of that effort, and did not come forward.

I think, as Ray Maria said, that the members of the American labor unions have a right to expect the very best possible Federal law enforcement effort in this area of union corruption. I cannot understand in 1986, particularly after the 1984 bill, that the most effective utilization of the available resources, which are never enough, never enough, there are never enough investigators to go after all the crooks in any law enforcement agency, I can't understand why the best possible utilization of these resources, FBI, Labor, or whoever, is being diminished by continued turf wars and empire protection.

It just seems to me that it is an affront to the union members. It is an affront to the taxpayers. I don't think it should be tolerated, and I applaud the subcommittee's move to air this thing and hang it out as a basis to do something.

I really cannot improve on Ray Maria's recommendations for actions, except to endorse them without qualification.

Senator **Nunn**. Thank you very much, Mr. Magee. One other question, but an important one. You had been through this for several years before you retired. Did anyone ever try to influence you, or do you have knowledge that anyone tried to influence any of your agents or others in the law enforcement arena, from a political perspective to influence this case, anyone in the White House?

Mr. **Magee**. Absolutely not.

Senator **Nunn**. Anyone at the Labor Department at a high level?

Mr. **Magee**. Absolutely not.

Senator **Nunn**. Anyone at the Justice Department at a high level?

Mr. **Magee**. Absolutely not.

Senator **Nunn**. Thank you.

Chairman **Roth**. Mr. Magee, I just have one question. I strongly agree with what you say, that it is shocking, outrageous, and impermissible that we have turf wars interfering with the law enforcement effort.

The thing that bothers me is that I have been in Washington a number of years serving in the Congress, and this battle is one that is continuously being fought. What I would like to know is, How can we get cooperation?

It seems to me it ought to be as clear to the agents in the field as well as the administrators in the home office as to the importance of working together. As you said, frankly, our resources are quite minimal compared with the size of the problem we face.

Yet I am concerned, because time and again, we seek to do something about it, but everybody knows that turf battles seem to be the most persuasive problem in Government, irrespective of who is in the White House; it doesn't make any difference who is in the White House. It is a continuous fight.

Let's assume we are able, and I can guarantee this, that this subcommittee is going to do its level best to seek some kind of an agreement between particularly Labor and FBI and the Department of Justice.

But what worries me, and maybe we can do that, but how do we get that implemented in good faith at the working field level?

Mr. MAGEE. Senator Roth, I have to encourage you to move out of this arena—the field agents, the field agents of the FBI or the Department of Labor and Internal Revenue Service or whatever. Agents live in their particular world: their case, their promotions, their transfers and things of that nature, their pride in their organization.

Ray Maria correctly said that it requires an absolute and honest top-level management commitment of the agencies concerned, and when that commitment is translated to the field office chiefs, you get action. The reason I say that with conviction is I had occasion a number of years ago to turn around the investigative operations of the Department of Agriculture, in almost a total philosophy turnaround. The turnaround did not involve reeducation or orientation of the special agents; it involved policy declarations, and it involved mandates to field office chiefs and supervisors that they would either turn around or there would be another field office chief or supervisor in their place.

I can tell you that when fitness reports and promotions and continued employment are tied to a basic change in operating behavior and philosophy, they will change, and their agents will do whatever they perceive is best for them to do in that field office operation.

So it seems to me that we are looking here at action that is required, in the first place, but certainly not the last place, by the Attorney General. The prosecutors all work for the Attorney General; the FBI works for the Attorney General, I think; and the Department of Labor wants to carry out their responsibilities, either independently or jointly in concert with the FBI or any other agency.

But it is going to come only from the very top level. Somebody says, "This will be done, and anybody who isn't going to do it is going to be hurt professionally." That seems rather simplistic, but I can tell you that that was my only way of effecting things.

Chairman ROTH. I can tell you that I think you are right. I think it is important to come from the top down, but I can also say that experience in the Government has shown me that its takes more than that, unfortunately; that it is well known that a lot of the people involved in these problems will say, "Well, if they don't like what is happening; we will just sweat it out." So that I think you are absolutely right that it has got to be started at the top down.

If I understood what Mr. Maria said earlier, we have a real problem in the field, as well. The real question is to get acceptance of these changed attitudes. I overwhelmingly subscribe with what you say. I would be happy to take those as first steps.

Thank you gentlemen very much for being here today. We find your information helpful and illuminating. I regret that we are having this kind of a problem, and we will follow through. Thank you very much.

Senator NUNN. Thank you.

Chairman ROTH. The next witness is Stephen Trott, Assistant Attorney General, Department of Justice, Criminal Division.

Mr. Trott, if you will remain standing and raise your right hand, do you swear the testimony you will give before the subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. TROTT. Yes.

Chairman ROTH. Please be seated.

Mr. Trott, do you have a prepared statement?

Mr. TROTT. Mr. Chairman, in written form, I do not. However with your permission, I would like to spend a couple of minutes to make some extemporaneous statements.

Chairman ROTH. Please proceed.

Mr. TROTT. I appreciate that opportunity.

[At this point, Senator Nunn withdrew from the hearing room.]

TESTIMONY OF STEPHEN TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. TROTT. I think really in a sense, I am delighted to be here today to talk about these extraordinary issues. I regret deeply, because of the pendency of some of these matters that are open to criminal investigations involving the Department of Labor, the FBI, and the Department of Justice, that I may not be able to answer fully in detail some of your inquiries at this time. However, I am fully confident that with the passage of time, we may be more available to give you greater detail with respect to some of the matters in which you are interested.

If I could just talk for one second, I would like to try to put some of this into a broader context, because what concerns me, after having been here for awhile, is that the person watching this hearing might come to the conclusion that somehow, the Strike Force Program, and particularly the Strike Force Program in Cleveland, had been less than a success. I think, Mr. Chairman, as you know, since 1981, the Cleveland Strike Force, and the Strike Force family operating as a partnership unit, has convicted and incarcerated the entire Cleveland mob leadership.

I won't take the time now to cite you all of the cases that have been returned in recent years, but let me just briefly give you a sense of what that Strike Force has been able to accomplish in that major city in the United States, because I believe that notwithstanding some of the problems that you have been talking about, this has been an outstanding accomplishment.

Let's start with James Licavoli, the Cleveland mob boss, convicted of RICO-murder and given a 17-year sentence in Federal prison;

Angelo Lonardo, the Cleveland underboss convicted of narcotics charges and given a life sentence;

John Calandra, Cleveland capo, RICO-murder, 14-year sentence;

Joseph Gallo, Cleveland capo, RICO-murder, narcotics charges, a life sentence;

Anthony Liberatore, Cleveland capo, RICO-murder, 14 years;

Tom Sinito, Cleveland capo, RICO-murder, 18-year sentence in Federal prison;

Joseph Naples, Jr., Youngstown capo, weapons violation, 1-year sentence. That is the leadership of the mob in Cleveland—plus a raft of mob associates including Thomas Lanci, RICO-murder, 8 years;

Pasquale Cisternino, RICO-murder, 12 years;

Ronald Carabbia, RICO-murder, 12 years;

Kenneth Ciarcia, RICO-murder, 10 years;

Frederick Graewe, narcotics, 17 years;

Charles Sinito, Jr., RICO;

Michael Ferrara, obstruction of justice, 5-year sentence;

John Felice, extortionist, 5-year sentence;

Orlando Carabbia, narcotics, 7 years;

John Montana, mail fraud, 5 years.

William Scott, RICO, 8 years.

Hartmut Graewe, RICO-murder, narcotics, life sentence.

Keven McTaggart, RICO-murder, narcotics, life sentence, including Milton Rockman, just convicted in Kansas City recently in one of the most significant organized crime prosecutions ever accomplished in the United States as part of this program.

Mr. Chairman, I think what is most notable about this program is not a few holes in the middle of it, as in the case of a doughnut, but what surrounds this whole program. That is what happens in the Strike Force, in the Federal Government against organized crime. The count taken at this time stands out as something that has never before been accomplished. In every major city in the country right now, organized crime leadership is either out on bail, in jail awaiting trial or in jail, hopefully on the way to Federal prison, where they belong.

[At this point, Senator Nunn entered the hearing room.]

Mr. TROTT. I think in the middle of a hearing that is directed, and properly so, that is examining the loose and frayed ends of a program like this, it is also important to keep in mind what the strike force program, working with all law enforcement families, has been able to accomplish.

I would simply add to my opening remarks that much more is yet to come. As you know, these cases take a long time. There are plenty of cases in the pipeline, and I feel very confident that the American public is going to be well-served by its law enforcement agencies working as a whole against this problem.

Chairman ROTH. Mr. Trott, I do feel that a number of indictments, a number of actions that have been taken, not only in Cleveland, but elsewhere, reflect very well, and I congratulate you and the Justice Department and others for the progress that has been made. I think it is perfectly proper to bring that in at this stage.

Nevertheless, I think the fact is that it is important that we be as effective, as efficient as we can, because we cannot afford to waste any resources, whether they are within the Justice Department, Labor Department, or elsewhere. One of our concerns, and I think our job, is to probe and try to find where there are weaknesses in an effort to bring about a strengthening of the law enforcement activities.

Frankly, this subcommittee has long been concerned, not only the last few years, but almost from the beginning, with the problem of labor racketeering, and the subcommittee, I believe under the then leadership of Senator Nunn in the seventies, was deeply disturbed, as was the full committee, with the lack of aggressive, vigorous action on the part of the Department of Labor.

The law was enacted because of this concern, and we feel it is very important that everyone, whether it is the Labor Department or the FBI or the Department of Justice, work together and fully utilize our limited resources, which are going down right now because of Gramm-Rudman.

So this is not intended to be a criticism of the general thrust or general effort, but it is an effort to probe where we can improve. I will be frank: That I am much concerned with what we have learned in this one area.

Before we get off into that, I would just like to ask you some questions. This whole investigation started, as you well know, on the speculation that there was political influence in the July 1985 decision to close the Cleveland ghostworkers case. Mr. Trott, was any political influence brought to bear in the Department of Justice to close this case?

Mr. TROTT. No, Senator. The case-related management decisions in which you are interested were made in the first instance by career law enforcement professionals on the basis of the facts as known at that time, on the basis of the law, on the basis of the interests of justice, on the basis of the quality of the evidence and on the basis of a very aggressive mindset and determination to lay to waste organized crime figures and labor racketeers in the United States.

Chairman ROTH. Who did the career prosecutors make their recommendation to?

Mr. TROTT. The ordinary chain of decisionmaking was followed with respect to this case and that, of course, would include the Cleveland Strike Force Chief and his lawyers, who have been named here today; the Deputy Chief of the Organized Crime and Racketeering Section, who would supervise directly the Cleveland office, and finally, the Chief of the Organized Crime and Racketeering Section in the Criminal Division who works directly for me. Those effectively are the people who have been making the case-related decisions.

I have been aware of the process. I have allowed it to occur in its ordinary fashion, and I have agreed with the decisions, the final decisions that were made along the way.

Chairman ROTH. So those reporting to you are the so-called career prosecutors or professionals?

Mr. TROTT. That is the way I refer to them, although I see myself as a career prosecutor, also. I have been in the business for 20 years.

Chairman ROTH. Was the decision to close the case concurred in by any of your superiors?

Mr. TROTT. I don't think I could use the word "concur". I think the buck stopped with the Criminal Division. People were notified, but it wasn't a process where anybody else had to concur. We had the ticket on it.

Chairman ROTH. Did you, at any time, receive any pressure from your superiors at the Justice Department or any White House personnel at any level to conduct the ghostworkers investigation in any particular fashion or to reach any particular decisions concerning who or whether to indict?

Mr. TROTT. No, other than the normal pressure to do things professionally, which is the way we always approach these tasks.

Chairman ROTH. Did you, at any time, try to influence, for political reasons, the career attorneys in the Criminal Division responsible for making prosecutorial recommendations in the ghostworkers case?

Mr. TROTT. No, Senator. I am very pleased with the opportunity to publicly have this aired, and I think now is the time. If anybody has any evidence of that happening, step forward. I believe your staff has examined this carefully. There is not a scintilla of evidence that this was handled on any basis other than one professionally.

Chairman ROTH. The staff report suggested the Department may not have probed as vigorously as might be expected into the veracity of the FBI agents' authorization claimed before declining prosecution of Jackie Presser in July 1985. What is your response to that suggestion?

Mr. TROTT. Mr. Chairman, I regret that I cannot answer that question at this time without either compromising or prematurely confirming some of the matters that remain under investigation in this case. What I can tell you is that when the final chapter is written on this, I am confident that the Department of Justice and the FBI will emerge proudly as agencies that have been able to take care, with skill, efficiency and integrity, of problems that they confronted. Unfortunately, I simply can't go into the details at this time.

Chairman ROTH. Both the testimony presented here today and the staff report indicates that there has been a long history of interagency rivalry in Cleveland that, frankly, has severely hampered the Government's effectiveness in combating labor racketeering in that part of the country. Justice Department personnel acknowledged to the staff that relations between the FBI Cleveland office and the Department of Labor Cleveland Labor investigators are quite acrimonious.

Does the Justice Department have a responsibility to mediate these types of turf battles, and if so, what has been done or should be done to correct it?

Mr. TROTT. Yes, we do, and at various levels, we have tried to take steps to reduce this tension. Most recently, I met with Mr. Maria and representatives from his office and representatives from the FBI in the Organized Crime and Racketeering Section in a slightly different context to review and upgrade our labor racketerring program. At that time, we did discuss the MOU that you have heard so much about today, and committed ourselves to doing everything possible to resolve the dispute that I believe is based on a reasonable difference of opinion as quickly as possible so that we can have a clear delineation of what the responsibilities of the various agencies are in this area.

Let me take this time to give you some different thoughts on MOU's and different agencies working on the same problem. On the basis of my experience, and bear in mind, I don't hold myself out as an expert, because I am not a frontline law enforcement investigator, as such. I do not work in a police-type law enforcement agency. But I have had a pretty good seat to watch law enforcement agencies work by themselves and work together and fail to work together on various occasions. And I think that an MOU is not really a question of form over substance, but I think it is the very stuff of which working relationships that are productive are fashioned.

It has come to my attention that one of the worst possible things that you can have in law enforcement is competition or rivalry. That doesn't seem to be true in business. My father was a businessman, and I often wondered how a single company could be selling six brands of soap, all competing against each other, and make a profit and do well.

He explained to me that somehow, in that environment, it just seems to happen. However, it has been my conclusion, that competition, when it comes to law enforcement, is deleterious and detracts from the ability of the agencies to accomplish their objectives.

So things like MOU's, which describe roles and functions and put together a partnership that Mr. Maria described and which I also agree is necessary, are very, very important. If I can try to draw an analogy, Congress is set up with committee structure, and each committee has a very clear sense of what its jurisdiction is. Part of that is to avoid turf battles and people getting into each other's backyard.

I know, notwithstanding the jurisdictions that are fairly clearly set down, on occasions, committees begin to encroach on one another. At that time, it is time to fall back and think "who does what." I think that it is extremely important for the Departments of Labor and Justice and Treasury and whoever to make sure they can proceed in a coordinated manner, and not in a competitive way.

It has been my observation that when two agencies are competing for the same territory, you might call it, or turf or whatever it is and working for the same objectives in the same area, that you invariably have a recipe for trouble and falling outs and disagreements and the kinds of things you are talking about today. It is imperative to utilize the agreements you are talking about so that agencies know precisely what they are going to be doing and how they are going to be working together.

I have been involved as a facilitator in the hammering out of an MOU between the Department of Defense and the FBI involving defense procurement fraud and matters like that. I have done the same thing with respect to the Secret Service and the FBI involving credit card fraud and hope to be able to participate with the Department of Labor and the FBI.

But if you told one single law enforcement agency, the FBI, to set up two divisions under two different structures of leadership and each go after the same problem, you would have a disaster on your hands, because they would start competing and you would have confusion.

I think that is the same problem that you get into when you have one department that is outside the Department of Justice and one department that is inside the Department of Justice working on the same turf.

Chairman ROTH. Let me interject here. The purpose, I thought, of the strike force was to overcome this rivalry and competition; it was to draw upon the resources of several agencies in a common effort.

Mr. TROTT. That is exactly correct.

Chairman ROTH. I guess what concerns me here is that in listening to the testimony and certainly, from what our staff determined in its investigation, members of the Department of Labor were specifically charged under the legislation adopted back in the seventies, with particular responsibility in labor racketeering.

Now, testimony today said those people thought that the FBI and others sort of wanted to limit them to auditing accounts or something like that. Let me ask you, in the strike force concept, what do you see as the role of the Labor investigators? Are they supposed to be limited to that kind of approach? Or what is their response, what would be their responsibility?

Mr. TROTT. Generally, the role of Labor investigators is viewed as one of being full partner in the program, of having certain delineated responsibilities, involving their considerable expertise in books and records and information, involving those areas in which they work; then that expertise is combined with the expertise of other agencies to pursue tactical objectives against the common enemy.

Chairman ROTH. It sounds to me, in effect, you are agreeing with what they said, that it is pretty much limited to the accounting and auditing?

Mr. TROTT. I think in some sense, that is probably not a wrong description of the way it has worked, although that isn't intended for a second to minimize the contribution of the role of the Labor Department. The Labor Department, on its own authority, has been very successful in producing significant cases against labor racketeers.

There is no question about it. I guess what I am trying to say is I believe it is important to recognize that when you put two separate entities into the field after the same foxes, you are going to have a recipe for problems unless there is very, very close coordination, and nowithstanding that close coordination, you are going to find circumstances that fail.

Chairman ROTH. I think Senator Nunn, you had a question?

Senator NUNN. Yes, Mr. Chairman.

I might just say, Mr. Trott, I have been through this about 8 or nine years now, and I recall Justice Department officials coming up and complaining that the FBI and the Justice Department didn't have the kind of assistance from the Labor Department that they needed, that the Labor Department was in charge of Labor investigations; that the Justice Department and the FBI didn't have enough people out there, that the Labor Department was intricately involved in looking at files of labor unions, and that if they were going to have any kind of effect, that the Labor Department had to be involved in referring and investigating cases, and that Justice would come in at a later stage.

We have been through all of this. We have been through all of this. That is why we passed a law, and that is why we acted on it, and the law is absolutely clear, I would submit. I have got your letter here. We wrote you a letter, interesting enough, on November 18, 1985, and this should be part of the record, Mr. Chairman.[1]

We wrote a three-page letter, and this letter was signed by the six people who authored this legislation, Mr. Rudman, Mr. Nickles, Mr. Hatch, Mr. Roth, Mr. Nunn, and Mr. Chiles. These were the authors of the legislation. We set forth, in detail, the intent of the legislation. We went through paragraph-by-paragraph.

We got a letter back from you in January of 1986, to use a mild term, in convoluted, bureaucratic terminology which makes no sense whatsoever. Let me just say here in quoting it, in the latter part of the letter, you say, "In light of the contrary views expressed in your letter, we have asked the Office of Legal Counsel in the Department of Justice to review both the legislative background of section 805 (b) and the effect of the legislation on the criminal law enforcement authority of other Federal agencies in the area of internal labor union affairs, the operation of employee benefit plans, and labor-management disputes."

First, with regard to the effects on other agencies, we heard all of that. We heard from the Justice Department before we passed the law. So we put a provision in here that is about as clear as I think Congress can write legislation. It says, and I quote, at the end of subsection B, "Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws."

How could you, in your letter, say that is one of the points you are looking into when we made it so abundantly clear?

Mr. TROTT. Senator, I guess we didn't think it was made so abundantly clear, and it was referred to our legal counsel.

Senator NUNN. "Nothing in this subsection shall be construed to preclude other Federal agencies from detecting and investigating civil and criminal violations of this title—"

What does this mean? That was the language we put in after hearing from the Justice Department. How could that be any clearer? "Nothing in this subsection shall be construed to preclude—"

What is unclear about that?

Mr. TROTT. Our lawyers believe that it wasn't clear exactly which violations that applied to, and we have a disagreement as to how it ought to be implemented.

Senator NUNN. You may disagree with the law. If that is the case, that is fine. The way to do that is to come up and ask us to change it, not to ignore it or reinterpret it or use the most convoluted reasoning I have ever read from an agency, supposedly people that are lawyers, in trying to get around what is abundantly clear.

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[1] See p. 53.

This statute says here, in talking about Labor, "The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to provisions of this title and other related Federal laws, including the detection and investigation and appropriate referral to related violations of title 18 of the United States Code."

"Nothing in this subsection," again "shall be construed to preclude other appropriate Federal agencies."

It is just incredible to me that you all can't sort this out when the authors of the legislation write you and you write back saying that: In light of your letter, we are now going to try to determine what the legislative intent is.

How are you going to determine that?

Mr. TROTT. We have referred it to our Office of Legal Counsel.

Senator NUNN. Are they going to ask the authors of the legislation?

Mr. TROTT. I don't know. The Office of Legal Counsel will do what it does. We obviously took your letter seriously, and since we haven't been able to arrive at a determination that is consonant with what you apparently think it should be, we referred it to somebody else.

Senator NUNN. In determining legislative intent, did it ever occur to you you ought to ask the legislators who wrote the statute? Would that be one of the avenues you would pursue?

Mr. TROTT. That is a possibility; that would be an avenue that will be pursued.

Senator NUNN. I haven't been contacted. I don't think Senator Rudman and Senator Roth have been contacted. This was in January. This goes to the very heart of what the problem is. The Justice Department obviously doesn't like the law, so you have chosen to ignore it. How can you be the enforcement agency for the laws of the land when you ignore the most clear expression of jurisdictional intent that Congress can pass?

Fine, if you don't like it, come up and tell us we ought to change it. We will have a good debate in a democratic fashion to determine whether you are right or wrong.

Mr. TROTT. I accept your invitation. I think the party that is missing here today to talk about what happens when you attack the same problem on the same field is the Federal Bureau of Investigation. I really think they ought to be involved in this discussion. We accept your invitation.

Senator NUNN. That is fine. We will be glad to hear from them. But you haven't the authority to change the law, nor does the Department of Labor have the authority to change the law. Only the Congress has that authority.

Mr. TROTT. It was not our intent to change the law.

Senator NUNN. That is what you have done, in effect. You have ignored the law, and you have changed the law by bureaucratic gymnastics. That is what you have done. I congratulate you on that ability, but I think it is deplorable in terms of the agency in Government that is supposed to be enforcing the laws in good faith. That is what each of you swear to do when you get over there in the Justice Department, as I understand your role. Is it not? Isn't it your job to enforce the law?

Mr. TROTT. Yes, as we understand it.

Senator NUNN. Whether you like it or not.

Mr. TROTT. As we understand it, that is absolutely correct. I am reminded that courts have held that postenactments of legislative intent are matters that are usually not to be considered in determining what the intent was when a statute was passed.

Senator, I can only say that the interpretation rendered in the first instance by people who work for me was not done in an attempt to thwart or ignore the law. They tell me it was their good faith interpretation of the words as they read them in conjunction with their understanding. If we are wrong, we have asked the Office of Legal Counsel to tell us, and we will abide by the law.

Senator NUNN. How long does it take the Office of Legal Counsel to tell you?

Mr. TROTT. We have told them as quickly as possible, because it was one of the sticking points that was in the memorandum of understanding that I agree is needed desperately.

Senator NUNN. If you people don't agree with our postenactment statement, I would suggest you go and review the preenactment records, because that is what the whole hearing was about.

Mr. TROTT. That is what we are doing.

Senator NUNN. We had witness after witness after witness from both Justice and Labor.

Mr. TROTT. I accept your invitation to discuss the wisdom.

Chairman ROTH. Let me just underscore what Senator Nunn has said. It appears to me that what this really comes down to, notwithstanding what the law says, is that it is the old-fashioned style turf battle, and that when the chips are down, the Justice Department and the components therein really don't want this responsibility to be within the Labor Department.

Let me go back to what you say, that you have two different, independent agencies, rivals in the same area. But in any event, Congress has spoken, and I do say that one of the things that we are going to do in the fall, at least, is to write the Attorney General and the Secretary of Labor, because I think this has to be cleared up and cleared up promptly.

If the administration does not like the law, then, as Senator Nunn says, they have the right to come back here and ask for an amendment. But until it is amended, we expect the law to be adhered to. Time is getting a little late, but I do want to ask some questions and I know Senator Nunn has more questions as well.

Mr. NUNN. Go ahead.

Chairman ROTH. I would like to go to these internal authorization guidelines of the Department of Justice for informants and authorization. Do you believe the current guidelines need revision, and if so, what do you suggest?

Mr. TROTT. No; I don't think they need revision. The FBI has made some moves recently to tighten up the administration of the guidelines, but I think they are good guidelines.

Chairman ROTH. When you say the FBI has made certain moves to enforce them, could you be more specific as to exactly what it has done?

Mr. TROTT. I believe they are reporting—they are requiring more frequent reporting of some of the decisions that are made with respect to informants, and I think they have moved up some of the decision levels with respect to approval.

Chairman ROTH. Let me point out that in the staff report, there are a number of conclusions drawn. One was that agents in the field felt they didn't have to comply with these guidelines if the initial authorization or action predates; in other words, there was what they call the grandfathering of the old rules.

Has that been changed in any way to your knowledge?

Mr. TROTT. I don't think so, because we are now in 1986, and these guidelines are now 6 years old, and most investigations fall within the guidelines. The analogy here is that you are talking about something that may have predated this particular set of guidelines.

Chairman ROTH. Let's assume that there are others. We have one instance here that predates it. Has anything been done to ensure that, irrespective of when an authorization took place, that the current guidelines are adhered to?

Mr. TROTT. I'm not positive on that, Senator. I will have to doublecheck with the FBI and answer that, with your permission, for the record.

Chairman ROTH. Second, let me ask you this question. The guidelines require these authorizations to be put in writing as well as reported periodically to the Justice Department. What steps have been taken to ensure that these requirements are currently being adhered to? Certainly, the staff report indicates in the instant case this has not been the situtation.

Mr. TROTT. Well, in my discussions as late as this week with people responsible for the informant program, I am told that this information has been communicated to the field and management steps have been taken to ensure that the guidelines are fully complied with.

In addition to that, the FBI has considerable in-service training regarding the handling of informants, which I think is one of the most complex areas with which one has to cope if one is in law enforcement. They have continuously tried to anticipate problems and get out in front of the problems and make sure that things are straightened out before they deteriorate.

Chairman ROTH. One of the concerns that has arisen from this investigation is that there does not appear to be adequate notification given, not only to the Justice Department, but to other agencies as to steps that might be taken that influence an investigation being made by these other agencies. What, if anything, is the Justice Department doing with respect to this problem?

Mr. TROTT. It is my understanding that at this point, the FBI is under orders to refer information to other agenices when they have reason to believe that it impacts significantly on another investigation. Only under circumstances where there is another overriding interest that that not be done is it not done, and under those circumstances, it is required to be referred immediately to the highest levels of the Department of Justice for confirmation of those decisions.

Chairman ROTH. In the instant case, of course, the investigation continued, and the prosecution was dropped when it was learned that certain authorizations were allegedly made. I think one of our concerns is that this is a tremendous waste that has two negative fallouts. One is that it is a tremendous waste of resources that could have been used in other investigations; and second, the impact it has on both those who are involved in investigations, as shown by the Department of Labor witnesses today, and just generally on the public at large.

I know that the regulations probably require it, but the real question is, What is being done to ensure that this requirement and notice is being adequately pursued?

Mr. TROTT. Senator, I can't directly or even indirectly answer your question, because it contains questions requiring answers for the matters under investigation. But I have talked to the managers of the FBI, and they assure me that the appropriate steps, that the guidelines, both procedural and substantively, are being adhered to.

They have ongoing, in-service training involving the handling of informants. As a matter of fact, this week, I have asked to be included in that in-service training. I, myself, teach at the Advocacy Institute and for various seminars the handling of informants in government and criminals as government witnesses. This is something I have been doing for a number of years, so this is something I pay close attention to. It is something I continue to learn. There is never too much knowledge that you can have on a tricky subject like this.

Senator NUNN. Mr. Trott, what is the procedure now that we have in terms of Labor and Justice when the Labor Department feels they need law enforcement authority? Are you able to deputize them?

Mr. TROTT. Yes. The general procedure is that the IG sends over a document explaining what the investigation is, what the circumstances are, setting out a justification for deputization and for the accoutrements that go along with it. The documents are reviewed by us. If we agree, it is extended. If we disagree, usually it is discussed further, and it could be denied. I have indicated to the people who make those decisions that I want the presumption to be in favor of granting this deputization unless, in fact, it simply is not warranted.

Senator NUNN. Do you have any records which indicate how many requests for deputies they have initiated in the last 2 or 3 years?

Mr. TROTT. No, I don't, Senator, but I am sure that both Mr. Hyland and my office can provide those to you for the record if you wish, with one caveat. I don't know whether they contain 6(e) material or other information that might have to be redacted, but I would be delighted to work with your staff to provide this information.

Senator NUNN. We don't know the details. I would just like to know the number of times they made the request, how long it took to act on the request and what the final result of the request was.

Mr. TROTT. I don't have that information. I thought Mr. Maria was here. He would have that information. But we can furnish it for the record.

[The information referred to follows:] [1]

U.S. Department of Labor,
Inspector General,
Washington, DC, June 6, 1986.

Hon. Sam Nunn,
Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

Dear Senator Nunn: During the Senate Subcommittee on Investigations public hearings on May 9, 1986, of the government's handling of the Jackie Presser investigation, you requested the Office of the Inspector General (OIG) to provide the Subcommittee with specific information concerning Inspector General requests that agents of the Office of Labor Racketeering (OLR) be appointed as Special Deputy U.S. Marshals in order to discharge their enforcement responsibilities. I have enclosed statistical data and relevant information for the period June 1, 1985, through May 31, 1986, which should be responsive to the Subcommittee's needs.

It has been my position that the deputation process is neither a practical nor efficient alternative to statutory law enforcement authority for OLR Special Agents. The deputation request process has proved to be cumbersome and unresponsive to those investigative exigencies which must be addressed immediately if OLR is to sustain a viable labor rakceteering enforcement program.

When the labor racketeering function was placed in the OIG in 1978, this office initially made frequent requests for deputation to the Assistant Attorney General, Criminal Division, U.S. Department of Justice. I am informed by staff that so few authorizations were granted that OLR field managers simply discontinued the practice of submitting justification requests to the OIG headquaraters for review and transmittal to Department of Justice (DOJ). In 1985, OLR reasserted its policy of requiring each field office to submit all legitimate deputation requests to OIG headquarters notwithstanding the few deputations which OLR historically had received.

I personally evaluate each deputation request and submit to DOJ only those which I believe are justified and compelling. I must, however, express my deep concern over reasons cited by DOJ in denying my requests. These denials generally have been based upon the following positions:

> The administration's general policy against the further expansion of firearms authority;
>
> Policy that deputation not be granted when another law enforcement agency with firearms authority is available to conduct hazardous portions of the investigation;
>
> OLR role is confined to specific offenses whose detection does not require techniques which necessarily threaten the safety of OLR agents or witnesses;
>
> Described operations do not present a significant likelihood of physical danger to agents or witnesses;
>
> Joint investigation with a state agency will afford DOJ little or no control over an investigation despite the fact that investigative results will be referred for federal prosecution; and
>
> OLR investigation or confrontation with those who employ violence to further their labor racketerring schemes represents a duplication of the FBI's effort.

In correspondence to DOJ, I have objected to such arguments for denial of deputation and briefly will address them once more in an effort to clarify apparent DOJ misperceptions about the role of OLR.

The suggestion that other agencies be injected into labor racketeering investigations out of context is neither practical nor desirable. Such a practice promotes fragmentation and destroys the continuity and rapport that must evolve between special agents and witnesses during complex, protracted investigations. Such a discriminatory practice, moreover, fails to reward those agents who conceptualize and develop cases. Those responsible for the genesis of labor racketeering cases often make the greatest significant contribution and logically must be permitted to develop the full scope of each investigatoin and implement appropriate investigative techniques. If we deny OLR special agents the opportunity to identify with their work product as full law enforcement professionals, no incentive exists for them to continue to detect and develop cases of significant labor corruption.

The potential for violence is inherent in virtually every investigation undertaken by OLR (all with the assent of a U.S. Attorney or Strike Force Chief). Labor racketeering today largely has evolved from physical, strong-arm tactics to sophisicated economic and financial crimes. The criminal element who ultimately benefit from such activity, however, will resort to violence to protect their lucrative sources of revenue. In accepting Justice's major premise, I would have to conclude that OLR should withdraw from its active enforcement program and adopt the role of an ancillary agency whose sole function is to provide investigative referrals and financial analysis support to the Federal Bureau of Investigation on labor racketeering endeavors.

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[1] The complete attachment has been filed in the confidential files of the subcommittee.

We encourage and stress cooperative efforts and joint undertakings with the FBI and all enforcement agencies. I do believe such efforts should be based on the *total contribution* each agency can lend toward the successful culmination. It cannot be accomplished if OLR agents are perceived as support staff limited to reviewing records and documents.

The positions presented by Justice clearly contravene the Congressional mandate of my office to pursue vigorously labor racketeering by the organized criminal element. I welcome the opportunity to discuss my concerns and these critical issues personally with you in an effort to improve the Government's enforcement efforts in the labor racketeering arena.

Sincerely,

J. Brian Hyland,
Inspector General.

Enclosure.

U.S. Department of Labor, Office of Inspector General, Office of Labor Racketeering

Analysis of Deputation Requests

Deputation requests submitted:	
June 1, 1985–May 31, 1986 (includes 6 appeals)	34
Requests approved [1]	[2] 12
Agents deputized	18
Requests denied (includes 5 appeals)	[2] 20
OLR removed from case (appeal)	1
Requests pending	1
Requests withdrawn	1

[1] One approval was too late for the planned arrest, one was restricted to self-defense for the case agent and approval denied for two other agents, and one was limited to record review and interviews, not surveillance.

[2] 1 partially.

Senator Nunn. Would you?

Mr. Trott. Certainly.

Senator Nunn. I will ask Mr. Maria to furnish you the same from the Labor Department.

Mr. Trott. We will do our best to get you or someone a number. We will coordinate.

Senator Nunn. That will be a step forward.

Mr. Trott. It certainly will.

Senator Nunn. How do you view the relationship between the Justice Department and the FBI? What is the relationship?

Mr. Trott. That is a large question. I'm not sure where to start. Are you asking me for a qualitative evaluation of whether it is good or bad?

Senator Nunn. Is the Justice Department in charge of the FBI?

Mr. Trott. Gentlemen, I think that the Attorney General is in charge of the FBI, although the Attorney General doesn't attempt to micromanage the FBI. It is an independent agency with a great tradition capable of handling its own matters, its own affairs.

Senator Nunn. If the FBI doesn't cooperate, what recourse does the Criminal Division of the Justice Department have?

Mr. Trott. I can tell you I have been in the Federal Government now since 1981, and I have never seen an incident where, when push comes to shove, we don't work out a cooperative solution to something. I would suspect that if we were unable to do that, at lower levels, it would be resolved between the Director and the Attorney General, although the way things are set up, I haven't seen the chemistry that would cause that to happen.

I have nothing but admiration and respect for the leadership and the management of people at the FBI right now. They have their eye only on the ball, and the decisions that they make are influenced only by the way they see the best solution.

Senator NUNN. Did I understand you in earlier testimony to express a willingness to take another look at the memorandum of understanding between Labor and Justice in this overall area?

Mr. TROTT. Absolutely. As a matter of fact, at the meeting that I referred to where I was present, and just because it was in my office, I was at the head of the table, I expressed my concern over this, as did we all. There has to be a memorandum of understanding hammered out as soon as possible that puts us in a position so that we understand the way the jurisdiction has been given to us is to be exercised and we can utilize all of our resources and energy against the enemy and not ourselves.

Senator NUNN. When was that meeting held?

Mr. TROTT. Time, it becomes a blur in Washington; it seems like it was a couple of weeks ago, but when I consult my calendar, I will probably find out it was a month and a half, 2 months ago. It was shortly after the Organized Crime Commission's report on labor racketeering, and we began a concerted effort to examine our program to see whether the recommendations of the Organized Crime Commission made any sense and to upgrade the program wherever possible.

Senator NUNN. Do the recommendations make any sense?

Mr. TROTT. I think in the abstract, many of the recommendations make sense. Many of the recommendations are things we have been doing for years, and I don't mean this as a criticism, but in some respects, the Organized Crime Commission is in a time warp and way behind the power curve. They were not made privy to current investigations, grand jury information, current title III's, and so they were taking a snapshot of something that really was, oh, maybe a year and a half, 2 years old.

But they had some good recommendations. We are examining those. Many of them are already in place, and we have no pride of authorship. If something comes to our attention from the outside, if it is good, we will adopt it.

Senator NUNN. Why is it taking so long to update the Labor Department-Justice Department memorandum of understanding?

Mr. TROTT. It is a disagreement in good faith regarding the extent to which jurisdiction ought to be exercised between two competing agencies, a very difficult problem.

Senator NUNN. Do you take the law into account in your deliberations?

Mr. TROTT. Yes.

Senator NUNN. When can we expect to hear from the Justice Department regarding the followthrough on the exchange of correspondence that we have had about that particular section?

Mr. TROTT. I will consult the Office of Legal Counsel and provide you with a target date for their opinion.

Senator NUNN. Thank you, Mr. Chairman.

Chairman, ROTH. Thank you, Mr. Trott.

We have one more witness, Franklin A. Curtis, the Associate Director, General Accounting Office, Human Resources Division. Please come forward, and his entourage.

Mr. TROTT. Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Mr. Trott. We will be wanting to follow through both on the matter of the guidelines and their enforcement, as well as the arrangements worked out between the Departments of Labor and Justice. We will send a letter to the Attorney General, as well, and the Secretary of Labor.

Mr. TROTT. I have made notices to specific questions I have offered to provide information on, and I will go and work on that today.

Chairman ROTH. Thank you.

Gentlemen, will you please raise your right hands? Do you swear the testimony you will give before this subcommittee will be the truth and nothing but the truth, so help you God?

Mr. CURTIS. I do.

Mr. KOWALSKI. I do.

Mr. BUTLER. I do.

Chairman ROTH. Thank you, gentleman. Please be seated. I want to express my appreciation for the work the General Accounting Office has done in this matter at our investigation and would ask that you summarize the results of that investigation.

Please proceed, Mr. Curtis.

TESTIMONY OF FRANKLIN A. CURTIS, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY RAYMOND J. KOWALSKI, ASSIGNMENT MANAGER, HUMAN RESOURCES DIVISION; AND JOHN J. BUTLER, EVALUATOR, HUMAN RESOURCES DIVISION

Mr. CURTIS. Thank you, Mr. Chairman. On my right is Mr. Ray Kowalski, and on my left is Mr. John Butler, who were principally involved in those various cases that we will be discussing.

Chairman ROTH. Gentleman, I want to express to each of you, as well, my appreciation.

Mr. CURTIS. We are pleased to appear here today to discuss the results of a request from you and Senator Sam Nunn, dated July 25, 1985, to examine the Federal Government's handling and coordination of an investigation of Mr. Jackie Presser by the Departments of Labor and Justice and the Federal Bureau of Investigation. Mr. Presser is currently president of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Union.

My statement, as you indicated, is fairly long with an appendix, and I will summarize it.[1]

Chairman ROTH. Your full statement will be included in the record.

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[1] See p. 65.

Mr. CURTIS. Thank you, Mr. Chairman. We will also be providing a report to the subcommittee which will contain more detailed summaries of the cases we reviewed, and we understand that the hearing record will be held open for that purpose.[1]

Your July 25 letter expressed concern that, one, Justice had reportedly rejected recommendations of its prosecutors in Cleveland, as well as a Cleveland Federal grand jury to prosecute Jackie Presser for allegedly authorizing payments to ghostworkers and, two, that during the Jackie Presser and other labor-management investigations, lack of coordination was alleged between Labor and Justice, between Justice officials in Washington and those in the field, and between Justice and the FBI.

In later discussions, the subcommittee staff asked us to concentrate our review on 13 additional investigations involving alleged criminal violations by Jackie Presser and various other Teamster Union officials.

There were certain restrictions and limitations on our work. As a result, we were not able to fully achieve our objective of obtaining complete information and data on the ghostworkers' and other cases and the coordination among the Federal agencies involved in the investigations.

For example: initially, Labor's inspector general agreed to give us access to Labor's files and records on the ghostworker case. Although he later denied us access because a district court judge in Ohio directed an investigation be made into the handling of the case, we were able to obtain the file from other sources.

Complete documentation was not available for all of the 13 cases identified by the subcommittee. For example, one file had been destroyed; another could not be located.

Initially, Justice did not allow us access to its records or officials involved in the ghostworkers and other cases. Later, Justice gave us access to its records and permission to interview certain current and former strike force officials involved in the other cases. However, Justice denied us permission to interview five key officials because of its criminal investigation of the Department's handling of the ghostworkers and other cases.

Disclosure of grand jury information is generally prohibited by section 6(e) of the Federal Rules of Criminal Procedure. The ghostworkers' and some of the other cases had grand jury involvement, and both Labor and Justice had to excise portions of this information from their case files.

The investigations or audits on all but 3 of the 10 other cases we reviewed were performed in the early to mid-1970's. Because of this, some Labor and Justice officials and former officials we interviewed had trouble remembering complete details concerning the cases.

[At this point, Senator Nunn withdrew from the hearing room.]

Mr. CURTIS. When we notified the FBI of our planned review, FBI officials could not cooperate because Justice is conducting a criminal investigation of the Department's handling of the ghostworkers' and other cases. The FBI's lack of cooperation has continued to date.

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[1] The report referred to was not available by the time this publication went to press.

Despite the limitations and restrictions on our work, we were able to obtain considerable data and information from the available investigation records and interviews with Labor and Justice officials.

In summary, our review of the 10 cases other than ghostworkers does not support the allegations to the subcommittee of a pattern of lack of interest or desire to indict by Justice or a lack of coordination between Labor and Justice, but rather, a variety of results and actions by Justice and the courts on Labor's findings.

Our review showed that coordination between Labor and Justice was very good, but deteriorated during the later stages of the ghostworkers' case.

Labor, Justice and the FBI were principally involved in the ghostworkers' and other investigations. In addition, two Federal district courts also have incurred costs for some of the cases, and Justice has incurred costs for convening grand juries. As of May 1, 1986, we had received estimated costs of these investigations from Labor and Justice and a Federal district court that was involved as follows.

For Labor, the estimated cost was $691,369; Justice $402,500; and for the U.S. District Court of Northern Ohio, $14,795. This, in total, is $1,108,664.

Labor's figure only represents its Cleveland office costs, and Justice's figure represents only salaries for attorneys working on the ghostworkers' and other cases and does not include the FBI's costs. We did not verify the cost data.

Mr. Chairman, this concludes my summary, and we would be pleased to answer any questions you or other members of the subcommittee may have.

Chairman ROTH. Thank you very much for your testimony and the work you undertook on our behalf.

One question I would like to ask you is, did you find the limitations you faced in performing your oversight functions to unduly impair your work? What were these limitations?

Mr. CURTIS. Yes; they did impair our work. In fact, they prevented us from really carrying out to any significant extent the work requested by this subcommittee. Part of the problem was the age of the cases—one had been sent to storage and later destroyed; another, could not be found; and in another case, one of the indicated cases that we were to look at had, in fact, been combined with another case.

We were not permitted to look at any material regarding the grand jury; and both Labor and Justice spent more time in excising data from their files before we were permitted to look at them, which presented some rather considerable delays to us.

Chairman ROTH. Let me ask you this. Did you find any of the restrictions unreasonable?

Mr. CURTIS. The one thing that surprised us, I guess, Mr. Chairman, was that we were refused to even have a entrance conference with the Federal Bureau of Investigation. Normally in our work we try to sit down with the agencies or any entity before we begin our audit to explain exactly what our work is to be. They refused to meet with us and have not met with us to date.

Chairman ROTH. Are you aware, Mr. Kowalski or Mr. Butler, of a situation where an agency refused to even meet with the GAO for the opening conference?

Mr. KOWALSKI. Not in my 35 years of working for the Government have we ever been refused.

Chairman ROTH. This is the first instance?

Mr. KOWALSKI. This is the first instance I am aware of.

Mr. BUTLER. Not in my less than 35 years.

Chairman ROTH. Gentleman, I, again, thank you for your extensive work, and you are excused.

Before closing the hearings, I wanted to personally express my appreciation to both Eleanore Hill, the head of the minority counsel and the minority staff, as well as to Dan Rinzel, the majority staff director and the majority counsel.

I think this has been an extraordinary, exhaustive examination, and I know that both Senator Nunn and myself appreciate the hard work that went into it. The subcommittee is in recess.

[Whereupon, at 11:45 a.m., the subcommittee was recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF FRANKLIN A. CURTIS, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the subcommittee, we are pleased to appear here today to discuss the results of a request from you and Senator Sam Nunn, dated July 25, 1985, to examine the Federal Government's handling and coordination of an investigation of Mr. Jackie Presser conducted by the Department of Labor and Justice and the Federal Bureau of Investigation (FBI). Mr. Presser is currently President of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America Union (IBT).

Your July 25th letter expressed concern (1) that Justice had reportedly rejected recommendations of its prosecutors in Cleveland as well as a Cleveland federal grand jury to prosecute Jackie Presser for allegedly authorizing payments to "ghost workers" and (2) that, during the Jackie Presser and other labor-management investigations, lack of coordination was alleged between Labor and Justice, between Justice officials in Washington and those in the field, and between Justice and the FBI. You requested that we independently develop information on these matters as they reportedly evolved in the government's handling of these various investigations, particularly the ghost workers' case.

In later discussions, the Subcommittee staff asked us to concentrate our review on additional investigations involving alleged criminal violations by Jackie Presser and various other Teamster union officials. The cases we were requested to review and the approximate time of the investigations were:

1. William Presser Teamster Journal Case (1970-71)
2. William Presser Misuse of Travel Funds (1970-73)
3. Audit of Teamster Local 299 (Richard Fitzsimmons) (Detroit) (1970-73)
4. Frank Fitzsimmons (Los Angeles) (Mid-1970's)
5. Audit of Teamster Local 507 of Cleveland (1973-74)
6. Gifts of Bally Stock to the William Presser Family (1975-77)
7. John Trunzo and Red Oxyer (1976-77)
8. Cook United Corporation (Late 1970's)
9. Hoover-Gorin (New York) (1973)
10. Hoover-Gorin (Cleveland) (1981-82)
11. Front Row Theater (1982)
12. Teamster Housing (1982)
13. Nicholas Francis Case (1970-72)

These cases involved alleged criminal violations that apparently were dropped by Justice or for which not indictment was returned, according to the Subcommittee staff. People have alleged to the Subcommittee that the cases may indicate a pattern of Justice's lack of interest or desire in indicting Jackie Presser and his associates and a lack of coordination between Justice and Labor.

Labor could locate no material on the Hoover-Gorin (New York) case, and Justice files provided to us contained no investigative report on Frank Fitzsimmons (Los Angeles). Also, John Trunzo/Red Oxyer and Cook United, mentioned as separate cases by the Subcommittee, were investigated by Labor under a single case number and in fact were considered one case. The 13 cases identified by the Subcommittee were reduced to 10 for our review.

The Subcommittee staff also asked us to—

—determine whether there were any other investigative cases involving Jackie Presser or his associates that Labor or Justice had dropped, and

—develop cost estimates for the federal government's investigation of the Jackie Presser ghost workers' and the other investigations.

Labor's responsibilities under the federal government's War Against Organized Crime program, established in 1967 under the direction of Justice's Criminal Division, were carried out by the Labor-Management Services Administration (now the Office of Labor Management Standards). As part of the program, Justice established organized crime strike forces to launch a coordinated attack on this serious national problem. The strike forces, which are directed by strike force attorneys, utilize staff and resources from various federal law enforcement agencies as well as labor. Many Labor personnel served as strike force members from 1970 to 1978.

Since 1978, Labor's work in the strike force program has been carried out by its Office of Organized Crime and Racketeering (now the Office of Labor Racketeering) within Labor's Office of the Inspector General. Labor staff are under the direction and supervision of the Inspector General. The investigators work in investigations involving labor-management, criminal, and labor racketeering activities of labor unions. They coordinate with and present their investigative results to the strike force and U.S. Attorneys for prosecutive consideration.

Labor's staffs in its Cleveland and Detroit offices performed the investigations and audits of the ghost workers' and other cases we were requested to review.

We did our work primarily at Labor and Justice, where we reviewed records and documents on the cases and interviewed knowledgeable officals. At Labor, this included work at the Offices of Inspector General and Labor-Management Standards in Washington and their field offices in Cleveland and Detroit. At Justice, this included work primarily at the Criminal Division in Washington. We also visited Justice's strike force office in Cleveland. In addition, we interviewed former strike force and Labor officials who worked on the ghost workers' and other cases. We obtained certain cost data from Labor, Justice, and a district court.

LIMITATIONS ON OUR WORK

There were certain restrictions and limitations on our work. As a result, we were not able to fully achieve our objective of obtaining complete information and data on the ghost workers' and other cases and the coordination between the federal agencies involved in the investigations. For example:

1. Labor's Jackie Presser ghost workers' case file.—Initially, Labor's Inspector General agreed to give us access to Labor's files and records on the ghost workers' case. Although he later denied us access because in August 1985 a district court judge in Ohio directed an investigation be made into the handling of the case, we were able to obtain the records from other sources.

2. Lack of records on several other cases.—Complete documentation was not available for all of the other cases identified by the Subcommittee. For example, the documents on one case, Nicholas Francis, were sent to storage and later destroyed, according to Labor officials. Also, Labor could locate no material on Hoover-Gorin (New York), and Justice files given us lacked an investigative report on Frank Fitzsimmons (Los Angeles).

3. Limited access to Justice records and officials.—Initially, Justice did not allow us access to its records or officials involved in the ghost workers' and other cases. Later, Justice did give us access to its records, permission to interview certain current and former strike force officials involved in the other cases, and their current locations. But we were denied permission to interview five key officials—including the Cleveland strike force attorneys and Washington Criminal Division officials—involved in the ghost workers' and other cases. Justice is conducting a criminal investigation of the Department's handling of the ghost workers' and other cases.

4. Lack of access to grand jury data.—Disclosure of grand jury information is generally prohibited by section 6(e) of the Federal Rules of Criminal Procedure. Because the ghost workers' case and some of the other cases had grand jury involvement, Labor and Justice excised portions of this information from files before allowing us to review them.

5. Most other cases old.—On all but 3 of the 10 other cases we reviewed, the investigations or audits were performed in the early to mid-1970s. Because of this and the length of time that had passed since they worked on the investigations, some Labor and Justice officials and former officials we interviewed had trouble remembering complete details concerning the cases.

6. The FBI could not cooperate.—When we notified the FBI of our planned review, FBI officials could not cooperate because Justice is conducting a criminal investigation of the Department's handling of the ghostworkers' and other cases. The FBI's lack of cooperation has continued to date.

RESULTS OF OUR WORK TO DATE

Despite these limitations and restrictions to our work, we were able to obtain considerable information from the available investigation records and interviews with Labor and Justice officials.

Review of cases shows no pattern

Our review of the 10 cases other than ghostworkers does not support the allegations to the Subcommittee of a pattern of lack of interest or desire to indict by Justice or a lack of coordination between Labor and Justice, but rather a variety of results and actions by Justice and the courts on Labor's findings.

For example, in the William Presser Teamster Journal Case, William Presser (Jackie's father) and James Franks (another labor official) were indicted, pleaded guilty, and were fined $12,000 and $24,000 respectively for accepting payments from employers for ads in a union organization journal in violation of the Labor-Management Relations Act (Taft-Hartley Act). In the William Presser Misuse of Travel Funds case, William Presser was again indicted for embezzling about $3,500 of union funds and falsifying union records. However, Mr. Presser was acquitted by the trial judge, who said that the government failed to prove its case.

In another case, the Audit of Teamsters Local 299 in Detroit, which involved alleged embezzlement of $2,500 in union funds by Richard Fitzsimmons (son of the late Frank Fitzsimmons, former president of the IBT), a former Detroit strike force attorney told us he wanted to present evidence to the grand jury in hopes of indicting Richard Fitzsimmons. Justice's Criminal Division, however, declined to pursue the charges.

In three other cases, the Cleveland strike force attorneys declined to pursue the alleged criminal violations uncovered by Labor's investigations because, they told us, they believed the cases lacked prosecutive merit. These cases were the Audit of Teamsters Local 507 (which covered the activities of former officials Harold Friedman, President; Allen Friedman, Vice President; and Jackie Presser, Secretary-Treasurer of the local); the Gifts of Bally Stock to the William Presser Family; and Cook United Corporation/John Trunzo.

A summary of the 10 cases we reviewed is presented in the appendix, which also contains limited information we were able to obtain on the other items classified as cases by the Subcommittee.

Early Labor and Justice coordination good but deteriorated later

Our review showed that coordination between Labor and Justice's Cleveland strike force and Criminal Division in the early days of the strike force was very good, but the coordination deteriorated during the later stages of the ghost workers' case.

We base our comments on coordination in the ghost workers' case on our review of Labor records and interviews with Labor officials. As we were not allowed to interview key Justice of FBI officials or review records, we are unable to present the views of these agencies on coordination. We interviewed most of the principal Labor and Justice officials, both current and former employees, involved in the investigations, but not five key Justice officials currently involved in the ghost workers' case. The investigators and attorneys we interviewed generally characterized as good the coordination between Labor and the involved strike forces, except for the later stages of the ghost workers' case.

Among the examples of such coordination mentioned were:

—Attorneys and investigators held discussions on the status and direction of the case;
—Investigations provided copies of interview writeups to the attorneys; and
—A Labor employee was the agency's representative to the strike force.

Often, these interactions were enhanced by the fact that the strike force and Labor offices were closely located.

Comments by Labor and Justice officials interviewed on coordination ranged from "more than satisfactory" to "excellent." For example, Labor's Office of Labor-Management Standards Area Office Administrator in Cleveland, also Labor's representative to the Cleveland Strike Force through 1973, called the coordination between the area office and the strike force excellent. Likewise, Justice's Senior Counsel for International Law Enforcement, who established the Cleveland strike force and was its first chief attorney, told us the relationship with Labor was very good. He said Labor's representative on the strike force did outstanding investigative work.

Regarding the ghost workers' case, when the investigation started in 1982, there was good coordination between Labor's Office of Organized Crime and Racketeering in Cleveland and the Cleveland strike force, our interviews with Labor officials and review of records indicated. But later, in late 1984 and early 1985, the Cleveland office, as well as the Inspector General, became dissatisfied with the coordination on the case. For example, in April 1985, the head of the then renamed Office of Labor Racketeering in Cleveland became unhappy with strike force attorneys after they returned from a meeting in Washington where Justice officials had instructed them not to consult with him during the final stages of the investigation and consideration of whether or not to indict Jackie Presser. Generally in such cases, Labor and Justice officials consult on whether to indict.

The ghost workers' case prompted concern in 1984 on the part of the Labor official responsible for it, the Deputy Inspector General. The length of time Justice was taking to decide whether to indict and to prepare the prosecutive memorandum, plus his belief that Justice was not giving the case the highest priority, caused him to visit Cleveland twice that year, he told us. Also he expressed concern about Jutice's decision to bypass part of Labor and only deal directly with the Inspector General on the matter.

Labor's Inspector General said Labor, having completed its work in November 1984, had done everything they possibly could on the case but Justice did not decide to close the case until July 1985. He told us that Justice and Labor could have resolved the case sooner had there been more coordination between the agencies.

Agency cost records on the ghost workers' and other investigations incomplete

Labor, Justice, and the FBI were principally involved in the ghost workers' and other investigations. Two federal district courts also incurred costs for some of the cases, and Justice incurred costs convening grand juries. As of May 1, 1986, we had received estimated costs of these investigations, from Labor and Justice and one of the federal district courts that was involved as follows:

Agency or court:	*Estimated costs*
Labor	$691,369
Justice	402,500
U.S. District Court of Northern Ohio	14,795
Total	1,108,664

We note that Labor's figure only represents its Cleveland offices' costs and Justice's figure represents only salaries for attorneys working on the ghost workers' and other cases and does not include the FBI's costs. We did not verify the cost data. Here are some details.

Labor

Within Labor, the Offices of Labor Racketeering and Labor Management Standards incurred costs relating to the ghost workers' and other investigations. The Office of Labor Racketeering estimated its costs as follows:

Salaries	$385,602
Travel	55,542
Services	225
Total	441,369

These figures, representing direct costs incurred by Labor's Cleveland Office of Labor Racketeering on the ghost workers' case plus others, were obtained from special agent monthly time reports, travel vouchers, and invoices for outside services rendered in connection with the investigation, according to a September 20, 1985, memorandum from the chief of the Cleveland office. These costs should be considered as minimum costs, the memorandum noted, as they contain no overhead or costs related to collateral investigations conducted by other offices and services performed by the national office.

The Office of Labor Management Standards national office had no time records or case files on the other cases from which to accumulate costs, according to its national office officials.

An estimated $250,000 was spend by the Office of Labor Management Standards' Cleveland area office on the following cases: William Presser Teamster Journal, William Presser Misuse of Travel Funds, Audit of Teamster Local 507 of Cleveland, Gifts of Bally Stock to the William Presser Family, and John Trunzo and Cook United. This estimate came from the administrator of that office in a memorandum to us of April 28, 1986.

Justice

Justice's costs for the ghost workers' and two other cases break down as follows:

Ghost Workers	$367,500
Hoover-Gorin	25,000
Front Row Theater	10,000
Total	402,500

The figures represent approximate salary costs of Justice attorneys involved in these cases and do not include costs incurred by the FBI or other investigative agencies, according to a December 26, 1985, memorandum to us from the Deputy Assistant Attorney General, Criminal Division. Justice could provide no meaningful cost data on the other cases (which occurred in the early 1970s), he said.

Also, Justice incurred salary costs of $45,000 in responding to congressional committee inquiries regarding the ghost workers' and other cases, the Deputy Assistant Attorney General estimated. This included the salaries of attorneys and paralegal personnel who compiled documents and answered requests for information about the underlying investigations.

Justice could not provide costs of grand jury investigations involving the ghost workers' and other cases, the Deputy Assistant Attorney General informed us in a memorandum of April 28, 1986. He stated that, with respect to the other cases, Justice was unaware of any records that would yield meaningful figures relating to grant jury time or expenses. Because of the ongoing internal investigation by Justice's Office of Professional Responsibility of the ghost workers' case, he said, it was impossible for the Department to supply cost information at that time.

FBI

On March 7, 1986, we requested cost data from FBI officials on the ghost workers' and other cases. On March 17, 1986, the FBI responded by stating it was requesting permission from Justice's Office of Professional Responsibility to give us cost data. On April 29, 1986, the Justice informed us that it had no problem with the FBI giving us cost information on the cases other than the ghost workers' case. As of today we have not received this information.

U.S. Distict Court

Of the other cases we reviewed, three—William Presser Teamster Journal, William Presser Misuse of Travel Funds and Nicholas Francis—resulted in action at the U.S. District Court for Northern Ohio, as did two other cases associated with the ghost workers' case—Allen Friedman and Jack Nardi. The court spent about $14,795 in salaries and expenses on these five cases, according to an April 22, 1986, memorandum to us from the clerk for the District court.

Mr. Chairman, this concludes my prepared statement. We will be pleased to respond to any questions that you or other members of the Subcommittee may have.

APPENDIX I

SUMMARY OF DEPARTMENT OF LABOR INVESTIGATIVE CASES ON JACKIE PRESSER AND OTHER TEAMSTER UNION OFFICIALS REVIEWED BY GAO

Below is a brief summary of investigative cases conducted by the Department of Labor's Labor-Management Services Administration (now the Office of Labor-Management Standards) Cleveland and Detroit Area Offices and the Labor Inspector General's office in Cleveland in cooperation with the Department of Justice's Cleveland and Detroit strike forces. The investigations cover the activities of Jackie Presser, President, IBT, and other Teamster Union officials.

1. William Presser Teamster Journal Case

In May 1970, Labor began investigating employer contributions to the Ohio Teamster Journal, a publication sponsored by Joint Council No. 41 of the IBT, and the possibility that the Journal was not actually published.

The investigation disclosed that William Presser, then President of Joint Council No. 41, had designated James Franks to operate the Teamster Journal. Total Journal receipts for the period 1964-1969 amounted to $594,398. Mr. Franks received about $468,028. Solicitation for ad space was made among trucking companies and other firms relying on truck transportation. However, complete issues of the Journal were published only in 1966 and 1970. There was no uniformity in the amounts employers paid for similar ads; distribution of the Journal was erratic; and some advertisers did not receive any copies of the Journal. Employers were given the impression at the time of solicitation that purchasing of an ad would guarantee freedom from labor problems.

In July 1970, William Presser and James Franks were indicted by a grand jury in Cleveland for 23 counts of accepting payments from employers by a labor organization in violation of the Labor Management Relations Act of 1947, as amended (the Taft-Hartley Act), and 1 count of conspiracy. Both entered pleas of not guilty to all counts of the indictment. On January 22, 1971, William Presser pleaded guilty to 8 of the 23 counts. He was fined $12,000. The conspiracy count was left outstanding until the case against James Franks was resolved and then dismissed. James Franks pled guilty on December 9, 1971, to all 24 counts and was fined a total of $24,000. Mr. Franks had also been charged by the Internal Revenue Service in February 1971 in Chicago for failure to file income tax returns. These charges were dismissed when Mr. Franks pleaded guilty on the *Journal* case.

One investigator on the case told us that during the investigation he was working under the assumption that William Presser would be indicted under a Hobbs Act violation. He told us he was disappointed in the case outcome but accepted it as a legal decision.

2. *William Presser Misuse of Travel Funds Case*

In October 1970, Labor again investigated the Teamsters Joint Countil No. 41 because the Council's 1969 annual report did not reflect expenses paid to Council officers, including President William Presser. It was believed that either the report was false or the expenses were charged elsewhere. The investigation found that Mr. Presser (1) authorized payment of airline transportation for his family members and for an associate of his wife, (2) made nonbusiness trips at Council expense, and (3) caused the sale of a Council automobile valued at $2,700 to a former Council business agent for $1.

William Presser was indicted by a grand jury in Cleveland on June 9, 1971, on four counts of embezzling about $3,500 and one count of causing false records to be made in union books and records. He pleaded not guility to all counts at his arraignment in the U.S. District Court for the Northern District of Ohio.

Labor investigators told us that in William Presser's jury trial on June 11 and 12, 1973, in the District Court, the defense counsel argued that the amounts had been reimbursed to the Council by Mr. Presser. The investigators, however, had not found the reimbursements in the records they had reviewed. One investigator told us that there may have been some limitations in what records they could review, but he could not recall who imposed the limitations. The prosecutor for the case told us that the government was aware of evidence regarding the reimbursement, but it decided to go forward with the case. According to Labor-prepared documents, the judge granted the defendant's motion for direct acquittal on all counts of the indictment after the government had presented its case and said that the government had failed to prove beyond a reasonable doubt that the defendant had violated the law.

3. *Audit of Teamster Local 507*

In February 1973, Labor began investigating Teamster Local 507. Previous Cleveland strike force investigations had indicated possible misuse of Local 507's funds. The investigation included a review of the local's financial and other records.

The Labor investigator who did most of the work on the case told us that his examination revealed no actionable violations, i.e., violations of labor laws such as the Labor-Management Reporting and Disclosure Act. In a December 1973 report to the head of the Cleveland strike force, he noted the close relationship between Teamster Local 507 and Bakery Workers Local 19 officers; the phenomenal growth of Local 507 since it was chartered in 1966; the unique control exerted over Local 507 by Harold Friedman (President), Allen Friedman (Vice President), and Jackie Presser (Secretary-Treasurer); and the structure and operation of the local, which inhibited members' direct participation in the local's affairs. In addition, the report identified a number of other areas that required further review.

In August 1974, Labor closed the case on the advice of the head of the Cleveland strike force, following his review of the investigation report. Because Justice denied us permission to interview him, we do know why the case was closed or other areas were not further reviewed.

4. *Gifts of Bally Stock to the William Presser Family*

In March 1975, Labor began an investigation of gifts of Bally Manufacturing Company stock to members of the William Presser family during the time that Bally received substantial loans from the Teamsters Central States Pension Fund. William Presser was a trustee and a member of the Fund's Executive Committee at the time of the loans. Labor's investigation included examining of records of both Bally Manufacturing and the Fund and records obtained from the Nevada Gaming Control Board.

According to Labor documents, the investigation disclosed that (1) in February 1972, the William Presser family received gifts of about $120,000 of Bally Manufacturing Company common stock from the personal account of Sam Klein, principal stockholder and officer of Bally; (2) in April 1972, the Fund loaned $6 million to Bally; (3) in August 1973, the Presser family received additional gifts of Bally stock worth about $16,500 from Sam Klein; and (4) in January 1974, the Fund loaned

Bally an additional $121 million. According to Mr. Klein's attorney, the gifts were part of Klein's estate planning and there had been no attempt to conceal the gifts, which had been reported to the Securities and Exchange Commission. The review also disclosed that Mr. Klein had made other gifts totaling about 41 million to other individuals in Cleveland in February 1972.

In its investigative report, Labor stated that its investigation failed to clearly establish that the gifts of stock to the William Presser family were granted in an attempt to influence the Fund's Executive Committee into approving the loans to Bally. A Cleveland strike force attorney who worked on the case told us that although the investigators pursued all of the leads on the case, they were unable to establish the "quid pro quo"—that something was given or received for something else. An investigator on the case told us that the investigators could not prove anything beyond what was in the records, which was circumstantial evidence. The then-head of the Cleveland strike force, after reviewing the investigative results of the case, directed that no further investigation be conducted in view of the lack of direct evidence of a violation. Labor closed the case in April 1977.

5. Investigation of Teamsters Local 299

In May 1970 the Detroit strike force began a comprehensive investigation of Teamsters Local 299 in Detroit. As part of the investigation, Labor developed the following two cases.

Richard Fitzsimmons Case

One aspect of Labor's investigation concerned allegations that Francis R. (Richard) Fitzsimmons, a business agent with the local, has allowed family members to use a union gasoline credit card for personal purposes and that he had charged other personal purchases to the union. Richard Fitzsimmons is the son of the late Frank Fitzsimmons, former Vice President and acting President of Teamster Local 299 and of the IBT.

The lead investigator on the case told us that the investigators had identified about $2,500 in gasoline charges in their investigation. The former Detroit strike force attorney on the case told us that both he and the head of the Detroit Strike Force recommended that Richard Fitzsimmons be indicated for embezzling union funds, but that officials in Justice's Organized Crime and Racketeering Section in Washington did not agree. Despite additional work by the Labor investigators to strengthen the case, on January 4, 1973, Labor was informed that the case had again been reviewed by officials in Washington and that they had decided to stand by the original decision to decline prosecution. The attorney told us that Justice had indicated that the amount involved was too small. An investigator on the case told us that other cases for similar amounts were being prosecuted in that time period, as illustrated below.

According to Justice officials, Richard Fitzsimmons was convicted on RICO conspiracy charges in Detroit in 1979.

Donald Davis Case

Another aspect of the investigation dealt with Donald Davis, an organizer of the Central Conference of Teamsters who worked under the direction of Rolland McMaster, the acting principal officer of Local 299. Labor investigators reviewed books and records of the local and contacted hotels and restaurants to determine if Davis has submitted false claims for reimbursement. According to a June 1972 Labor report, the investigation disclosed that Davis has submitted false receipts to the union totaling about $1,600. In addition, certain lodging, automobile, and travel expenses totaling about $1,800 that were not normally considered by the local as reimburseable expenses were also paid. Both an investigator and the former Detroit strike force attorney told us that they believed Labor had a strong case against Davis.

On September 20, 1972, Donald Davis was indicted by a grand jury in Detroit on four counts of embezzling union funds and making false entries in union records. He pleaded not guilty to all counts, and in a 1973 jury trial was found not guilty on all counts.

6. Nicholas Francis Case

According to records of the U.S. District Court, Northern District of Ohio, on July 23, 1970, Nicholas Francis, president of Teamsters Local 416, was indicted by a grand jury in Cleveland on two counts of embezzlement of union funds and four counts of making false union records. On April 26, 1972, an order for dismissal of the indictment was filed and approved by the same court.

The Francis case was investigated by Labor's Cleveland office. We discussed the case with two Labor investigators and three former Cleveland strike force attorneys who worked on the case, but they could not provide us with many specifics. According to Labor, the investigative case file was sent to records storage in 1976 and destroyed in 1982.

The investigators told us that the investigation found that Patrick Catalano, former president of Teamsters Local 416, and Nicholas Francis, then secretary-treasurer of the local, spent $16,000 to $20,000 at the Theatrical Grill in Cleveland and charged the expenses to the union. (Newspaper articles at the time of the indictment reported the amount involved as about $14,000.) According to one investigator, he believed that they had developed a case against Nicholas Francis. He also told us that Patrick Catalano had disappeared in 1968 and was presumed to have been murdered. None of the investigators or former strike force attorneys we talked with could remember why the indictment against Francis was dismissed. One investigator thought there was some problem with the form of the indictment—i.e. the number of counts that should have been included. He also told us that the former head of the Cleveland strike force told him that Nicholas Francis would be reindicted, but that this did not occur.

7. Cook United Corporation/John Trunzo Case

In October 1974, the Cleveland strike force requested that Labor investigate two allegations to determine whether any violations of the Labor Management Relations Act or the Labor-Management Reporting and Disclosure Act had occurred. The first allegation was that an unnamed management official at Cook United Corporation made a payment to an unidentified official of Teamesters Local 507—which, if true, would be a violation of the Labor-Management Relations Act. The payment was allegedly in connection with a wildcat strike by members of Local 507 employed at Cook and made to insure that the union would not interfere on the striking members' behalf. According to its report of the investigation, Labor failed to substantiate this allegation.

The second allegation was that a Local 507 official who was extracting payments from an unnamed employer was later discharged by the union; that the union reimbursed the employer; and that the union classified the payments in its records as the repayment of a loan. If true, these actions would be violations of both acts. According to Labor's case report, the investigation found that only one employee—John Trunzo—had been terminated by Local 507 during the period covered by the allegation and the reason provided in union records for this was for poor health. Trunzo's employment as a business agent of the Bakery Workers Local 19 and plan administrator of Local 507 pension fund was also terminated at the same time. He received about $31,000 in severance pay from these positions. Although the investigators found that one of Trunzo's severance checks was cashed by a trustee of Local 507's pension fund, Mr. Trunzo insisted that he received the proceeds of all of his severance checks.

Labor's report also states that the investigation established that John Trunzo had filed a false application for a loan at a bank and that the strike force attorney on the case submitted a prosecutive memorandum recommending that Trunzo be indicted. The strike force later directed that no further investigation be performed and the case be closed. A Labor investigator told us that he believes the decision not to prosecute Mr. Trunzo came from Justice in Washington. Neither the former strike force attorney nor another Labor investigator could provide us details on the case. Also, Justice would not allow us to discuss the case with Justice officials in Washington. Labor closed the case on February 22, 1977.

8. Hoover-Gorin (Cleveland) Case

In August 1981, Labor's Inspector General's office in Cleveland began investigating allegations that Jackie Presser, then Vice President of the IBT, was a recipient of a large sum of money from a public relations firm that had a contract with the IBT. According to a Labor summary of the case in a series of articles in late August 1981, the Cleveland Plain Dealer had alleged that Jackie Presser was the recipient of about $300,000 in illegal kickbacks from Hoover-Gorin and Associates during the period August 1972 through June 1974. The article relied heavily on information supplied by Harry Haler, an original investor in Hoover-Gorin.

Labor's investigators conducted interviews, subpoenaed documents, and Labor auditors performed financial analyses. A Labor official responsible for overseeing the case told us that all of the evidence pointed to the fact that there were kickbacks to Jackie Presser and that Labor was very optimistic about getting an indictment.

According to the same official, the head of the Cleveland strike force informed him that the Hoover-Gorin case was being closed. An early October 1982 Cleveland Plain Dealer article quoted Jackie Presser's attorney as having received a letter from a Justice official in Washington stating tht the investigation regarding the Hoover-Gorin case was closed. According to an investigator on the case, a strike force attorney had told him that the case was closed because there were doubts about the credibility of a primary witness. Justice did not allow us to discuss this case with the head of the Cleveland strike force or with the Washington Justice official.

9. Front Row Theatre (Cleveland)

In early 1982, Labor began investigating the possibility that the Front Row Theatre had been used as a vehicle to provide about $1 million to Jackie Presser. This review was one of several leads being pursued by Labor in its overall investigation of Jackie Presser. Mr. Presser had been quoted in the press that he had become a millionaire from dealings in the Front Row Theatre. The theatre in Cleveland is an entertainment arena featuring live performances by musicians and entertainers.

We discussed the case with the Labor investigators and officials having responsibility for the case and reviewed available documents from the investigation. According to the Labor investigators, the transactions involving the Front Row Theatre were suspect. The investigators found that Jackie Presser had invested in the theatre before it was sold to a large company for about $1 million more than its market value. That company then sold the Front Row Theatre back to its original owners, less Jackie Presser, and the extra million dollars. The investigators believed that there was some connection between the Front Row Theatre transactions and the granting of loans by the Teamsters' Central States Pension Fund.

One Labor investigator told us that the Front Row Theatre case was a very solid case and he believes that Mr. Presser and others could have been indicted for embezzlement of union funds, extortion, bribery, and conspiracy. He told us that all they had to do was to analyze loans from the pension fund and develop the "quid pro quo." Another investigator told us that they were ready to go to the grand jury to develop the evidence they needed, but that the case did not get that far. He told us that although the strike force did not order the Front Row Theatre investigation stopped, neither did it provide direction to Labor on the case. Another investigator told us that at the time the investigation stopped, Labor had not proven its case. He also said that the strike force appeared much more interested in devoting its resources to the ghost workers case.

Justice would not allow us to discuss this case with officials of the Cleveland Strike Force or Justice in Washington.

10. Teamster Housing

In early 1982, Labor's Inspector General's office in Cleveland investigated a lead that Jackie Presser may have been receiving kickbacks from a company that was managing Teamster housing units in Ohio. This was part of Labor's overall investigation of Jackie Presser. We discussed the case with Labor agents. We were not able to discuss it with Justice or strike force officials. The former head of Labor's office in Cleveland told us that they did not find sufficient evidence to support the allegation and that a consensus was reached on this with the strike force. One of the investigators on the case told us that he thought they had sufficient evidence. None of the individuals we talked with could provide details of the investigation, nor was there much on the investigation in Labor's files.

Remaining Cases

There were two other cases we were requested to review but, as noted below, a lack of adequate records and documents prevented such a review.

Hoover-Gorin (New York)

We were unable to find out much about this case. We requested documentation on the case from Labor and Justice officials but they were not able to locate any relevant material. In reviewing Labor documentation for a 1981 case involving Hoover-Gorin, we found some information on the case, as noted below.

In December 1973, a Federal grand jury subpoena was requested and served at the request of the Manhattan Strike Force. The subpoena required the production of nearly all of the books and records of Hoover-Gorin and Associates of Las Vegas. A 1981 Labor report noted that it had not yet determined the exact nature of the grand jury investigation, nor were records obtained under the subpoena found.

Frank Fitzsimmons (Los Angeles)

The files Justice provided us did not contain an investigative report on this case. However, in mid-1970's the FBI apparently investigated Frank Fitzsimmons and a prepaid health plan called People's Industrial Consultants. The case was allegedly worked by the Los Angeles Strike Force.

OVERVIEW OF GOVERNMENT'S HANDLING OF JACKIE PRESSER INVESTIGATION

* * *

STAFF STUDY

MADE BY THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

MAY 9, 1986

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I. INTRODUCTION

The following staff study outlines the progress thus far of the Subcommittee's investigation. After a brief description of the interests and background of the Permanent Subcommittee on Investigations in the areas of organized crime and labor racketeering, the initial allegations pertaining to this case will be discussed as well as the staff's success in proving or disproving them.

On July 24, 1985, the Los Angeles Times reported that the Department of Justice had decided to drop its labor fraud investigation of Jackie Presser, President of the nation's largest union, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

According to published reports at that time, the Department's decision to decline prosecution was made in Washington and contrasted sharply with recommendations by its prosecutors in Cleveland and the recommendations of a federal grand jury in that city. Both had recommended indicting Presser in connection with allegations that he authorized payments in excess of $700,000 to "ghostworkers," persons who were reportedly placed on his union's payroll with the understanding that they would not be required to work.

This investigation had been started by the Department of Labor's Office of Inspector General in conjunction with the Department of Justice, Organized Crime and Racketeering Section, Cleveland Strike Force, in February 1982. It had already resulted in the conviction of two ghostworkers, Allen Friedman, who is Presser's uncle, and John Nardi, Jr., son of a former organized crime leader in Cleveland, John Nardi, Sr. The government had planned to use both Friedman and Nardi as key witnesses against Jackie Presser before the case was suddenly declined.

The announcement on July 24 was not without premonition. According to a Los Angeles Times article of July 18, 1985, the grand jury hearing the evidence on the Presser case was displeased with the pace of the Department of Justice's probe. The foreman of that grand jury was quoted as complaining about the Justice Department's pursuit of the Presser investigation.

On Friday, July 26, Senator Nunn, on behalf of Senator Roth and the Subcommittee, announced on the floor of the Senate that a preliminary investigation into the handling of the Presser case was being opened. In the floor statement, Senator Nunn indicated that the day before, both he and Senator Roth had requested the full cooperation of the Departments of Justice and Labor, as well as the FBI, in the Subcommittee's investigation. Senator Nunn also announced that the General Accounting Office had been asked to make a preliminary examination of the Presser investigation for the Subcommittee.

A. THE INTEREST

The inquiry announced by Senators Nunn and Roth on July 26 rests on a long Subcommittee tradition of investigating labor racketeering and those federal agencies charged with the responsibility to combat it.

The Subcommittee has made numerous bipartisan inquiries into instances of irregular practices in the labor-management field and has played a key role in bringing about much needed reforms. The Labor-Management Reporting and Disclosure Act of 1959, commonly referred to as the Landrum-Griffin Act, was a major reform that resulted from PSI's work, including 284 days of hearings during the 85th and 86th Congresses.

When the landmark pension reform act of 1974, the Employee Retirement Income Security Act (ERISA), was first being implemented, PSI undertook a comprehensive and bipartisan evaluation of how the government was enforcing the statute. With support from both political parties, the Subcommittee took issue with the Carter Administration Labor Department over that Department's somewhat limited interpretation of how ERISA was to be used.

These differences came to light in hearings before the Subcommittee during the 95th and 96th Congresses on the Labor Department's use of ERISA in trying to reform the scandal-plagued, multi-billion dollar Teamsters Central States Pension Fund. The Labor Department had at that time failed to pursue allegations that the Fund had authorized millions of dollars of loans to resorts, casinos and other enterprises controlled by persons with alleged ties to organized crime.

Another bipartisan investigation in the labor-management field was the Subcommittee's inquiry into corruption on the New York and Florida waterfronts. As a result of this inquiry, Senator Nunn introduced the Labor-Management Racketeering Act of 1981 which was cosponsored by Senators Roth, Rudman and Chiles, all members of PSI. The bill was subsequently enacted into law on October 12, 1984.

From 1981 through 1984, the Subcommittee, under the direction of Chairman Roth, conducted an extensive investigation of the Hotel Employees and Restaurant Employees International Union (HEREIU).

B. THE ISSUES

The staff's investigation primarily focused on two issues: first, did improper reasons motivate the Department of Justice's decision not to prosecute the Presser matter; second, what kind of problems may have arisen during the course of the investigation which caused it to be aborted at the eleventh hour?

Under ordinary circumstances, the legislative branch does not evaluate the actions of the Justice Department when it decides to indict or not indict someone on criminal charges. But circumstances surrounding the Jackie Presser investigation are clearly not ordinary. He is, first of all, one of the nation's most important labor leaders. As International President of the Teamsters, he heads the largest union in the country. He is an adviser to the Reagan Administration on labor issues, served on the Reagan transition team in 1980, and was co-chairman of the inaugural labor committee in 1985.

Moreover, responsible and knowledgeable persons both within and outside the law enforcement community have for some time indicated that there were serious problems with the government's handling of this investigation. In light of all these facts, the Chairman and Ranking Minority Member authorized a bipartisan Subcommittee investigation to review the following questions:

1. What is the official explanation for declining to prosecute?
2. Was there any political influence in this decision to decline prosecution?
3. Was there a lack of interagency coordination in this case that indicates a failure of the Justice Department strike force concept?
4. Were there attempts by the FBI to obstruct the Labor Department's investigation of Presser?

5. Did the Department of Justice diligently and effectively pursue the Presser investigation?

6. Were Jackie Presser, members of his family, and close associates afforded improper or favorable treatment by the Department of Justice in this and other investigations they conducted?

7. What are the costs of the aborted Presser investigation?

C. THE INVESTIGATION

Since July 26, 1985, the Subcommittee has conducted the investigation under the auspices of Chairman Roth and Senator Nunn, Ranking Minority Member, and immediate supervision of Majority Chief Counsel Daniel Rinzel and Minority Chief Counsel Eleanore Hill. Majority Staff Counsels Howard Shapiro and Susan Lebeaux and Minority Assistant Counsel John F. Sopko have conducted the investigation for the Subcommittee.

The Subcommittee has also requested the General Accounting Office to independently develop information on the government's handling of the Presser investigations, particularly those cases that preceded the ghostworker case.

As of this date, the Subcommittee staff has interviewed or deposed twenty six witnesses, including all of the Labor Department and most Justice Department personnel involved in the ghostworkers investigation. While the Labor Department and the Criminal Division of the Justice Department have been generally cooperative in providing access to witnesses, another component of the Justice Department, the Federal Bureau of Investigation, has consistently refused to permit the Subcommittee staff to interview any of its employees.

Additionally, the Subcommittee staff has reviewed redacted portions of all of the Department of Labor's case files on Jackie Presser, his family and close associates, including thousands of pages of interviews and field agents' reports. The Department of Justice has also permitted the review of certain portions of their files but in a much more redacted state. The FBI has only permitted the review of redacted files dealing with the bribe solicitation investigation of John Nardi, Jr. It has refused to turn over any other investigative files. Until recently the FBI had even refused repeated requests for its internal guidelines regarding authorizations. These 1980 guidelines were finally provided on January 27, 1986 to the Subcommittee by Assistant Director Oliver Revell. While FBI Director William Webster did on two occasions personally discuss this matter with Senators Roth and Nunn, the FBI's overall attitude toward the Subcommittee's investigation can be fairly characterized as one of obfuscation, intransigence and delay.

By contrast, the Treasury Department has given its complete cooperation in response to requests by the Subcommittee staff. Pursuant to Senate Resolution 284, the Internal Revenue Service provided voluminous investigative files. No tax return documents were requested or received by the Subcommittee. The Bureau of Alcohol, Tobacco and Firearms has given the Subcommittee staff complete access to pertinent files and permitted the staff to interview Cleveland ATF Supervisor Steve Wells without any constraints placed upon the subject matter to be discussed and/or the documents to be reviewed.

None of the documents provided by the Departments of Labor or Justice include grand jury material, informant information or information resulting from Title III electronic surveillance. The Subcommittee staff wants to emphasize that the staff has not requested, nor has it received, any information from DOJ or FBI personnel which would confirm or deny the existence of any specific informants.

For the benefit of the reader, a list of individuals playing a significant role in this matter can be found in the appendix.

II. BASIC CHRONOLOGY OF GHOSTWORKERS CASE

The following chronology describes the key events pertaining to the ghostworkers investigation, as a backdrop for the more detailed discussions of the issues which follow:

1. In 1966, Teamsters Local 507 was chartered in Cleveland, to be run by Jackie Presser, Harold Friedman, and Allen Friedman.[1] Allen Friedman also formed unaffiliated Local Union 752.[2]

2. In 1972, Anthony Hughes became Recording Secretary of Local 507, and John Nardi, Jr. became a business agent for the local.[3]

3. In May, 1976, following a heart attack suffered by Allen Friedman, Jackie Presser, Harold Friedman, and Allen Friedman agreed to merge Local 752 into Local 507. They also agreed that Allen Friedman would be placed on the Local 507 payroll as a business agent with a weekly salary of $1000. The actual merger was effected in January, 1977.

4. In August, 1978, George Argie was placed on the Local 507 payroll. Argie was taken off the payroll in June, 1979. John Nardi, Jr. was taken off the payroll at the end of 1978.

5. In August, 1981, Jackie Presser, Harold Friedman, and Allen Friedman met to discuss Allen Friedman's status with the union. This discussion resulted in the removal of Allen Friedman from the payroll effective September 21, 1981.

6. In August, 1981, the Department of Labor's Office of Inspector General (DOL OIG) in Cleveland began an investigation into alleged kickbacks paid to Jackie Presser by a Las Vegas public relations firm hired by the International Teamsters Union (the "Hoover-Gorin" investigation). In early 1982, DOL OIG expanded this investigation to include allegations of ghostworkers at Local 507, following the receipt of confidential source information. The alleged ghostworkers included Allen Friedman, Nardi, Argie, and Hughes.[4]

7. In April, 1982, the Cleveland Strike Force officially opened an investigation of alleged ghostworkers, and subpoenas were issued for business records of Local 507 and Bakery Workers Local 19.[5] Throughout 1982, the DOL OIG investigators conducted interviews and witnesses appeared before a grand

jury in Cleveland. Most importantly, Allen Friedman and John Nardi, Jr. told the DOL OIG investigators that they had performed no work while on the Local 507 payroll.

8. On October 4, 1982, the Department of Justice closed the Hoover-Gorin investigation without any prosecutorial action. On October 8, 1982, DOL OIG investigators executed a search warrant at the Local 507 office.

9. On February 24, 1983, the government charged John Nardi, Jr. with conspiring to embezzle union funds (for being a ghostworker at Local 507) and solicitation of a bribe (involving an alleged solicitation of a bribe from Jackie Presser in exchange for recanting Nardi's grand jury testimony). Nardi pled guilty to these charges on March 16, 1983, and sentencing was deferred pending his cooperation with the government.

10. In July, 1983, Allen Friedman was indicted for embezzling union funds. He was convicted in September following a jury trial and received a three year prison sentence. (Friedman began serving this sentence in September, 1984, following the denial of his appeal by the 6th Circuit.)

11. In June, 1984, the Cleveland Strike Force delivered its prosecution memorandum to DOJ's Organized Crime and Racketeering Section (OCR) at a conference in LaJolla, California. The memorandum recommended the prosecution of Jackie Presser, Harold Friedman, and Tony Hughes on conspiracy and related charges involving ghostworkers at Local 507.

12. In July, 1984, following pre-indictment conferences with attorneys for the three potential defendants, Paul Coffey, OCR Deputy Chief, ordered additional investigative work to be done, focusing upon the relationship between Local 507 and Bakery Workers Local 19. Following completion of this work, the Strike Force drated a second prosecution memorandum. The OCR Section received this memorandum, again recommending the prosecution of the same three individuals, in January, 1985.[6]

13. In March, 1985, Paul Coffey recommended that the cases against Harold Friedman and Tony Hughes be dropped and the prosecution go forward solely against Jackie Presser. OCR Chief David Margolis adopted this recommendation, leading to additional pre-indictment conferences with Jackie Presser's attorney, John Climaco, in June, 1985.

14. On July 22, 1985, David Margolis informed the DOL Inspector General that DOJ had decided not to prosecute Jackie Presser for alleged ghostworkers on the Local 507 payroll.

III. EXPANDED ISSUE SECTION

A. WHY DID DOJ DECLINE PRESSER PROSECUTION?

On July 22, 1985, the Department of Justice, through Organized Crime and Racketeering Section Chief David Margolis, informed the DOL Inspector General and the Cleveland Strike Force that it had decided not to prosecute Jackie Presser on allegations involving ghost employees at Local 507. News reports of this decision appeared almost immediately. On July 25, Margolis wrote, "There is clearly not a probability that an unbiased trier of fact would find Presser guilty beyond a reasonable doubt under the currently available evidence." However, no reasons were revealed publicly, leading to speculation in the media and elsewhere that the decision was the result of political influence, since the Teamsters Union had prominently supported President Reagan during his presidential campaigns, and high-ranking Administration officials had appeared with Presser at various social and political functions.[7]

Based on its review[8] the Subcommittee staff has found no evidence to support allegations of political influence. Each of the DOJ and DOL staff persons interviewed by the PSI staff (see appendix) denied receiving any pressure from Administration officials to conduct the Presser investigation in any particular fashion, or to close the investigation without prosecution.[9] The decisions not to prosecute in this case were made by career government attorneys and concurred in by mid-level political appointees. There is no evidence of any effort to influence the decisions of the career attorneys.

The reason for declination, as related to PSI staff by DOJ Organized Crime and Racketeering Section (OCR) personnel, involved information that FBI agents in Cleveland had "authorized" Presser's conduct. Therefore, a crucial element of criminal activity -- intent -- would be difficult to prove and a prosecution would be very unlikely to succeed.

PSI staff has been unable to explore the allegations concerning the agents' conduct further than the interviews conducted with DOJ personnel. The FBI has denied the Subcommittee staff access to both relevant files and personnel.[10]

DOJ prosecutors first learned of those alleged FBI authorizations resulting in the eventual closing of the case in June, 1985, during a pre-indictment conference with John Climaco, Presser's attorney. By this time the prosecution's original case, involving multiple defendants and ghostworkers, had already been significantly limited.

PSI interviews and review of DOJ and DOL files revealed that by the end of 1983, the field investigation of the ghostworkers case had been substantially completed, and Paul Coffey, Deputy Chief of DOJ's Organized Crime and Racketeering Section, in both written memos and discussions with DOL OIG personnel in early 1984, was enthusiastic about the prospects for a successful prosecution. On June 12, 1984, after receiving a prosecution memorandum from the Cleveland Strike Force, Section Chief David Margolis wrote that the "case is clearly there." Paul Coffey wrote that the evidence of guilt is "both strong and uncomplicated." However, based upon "informant problems" (unspecified because DOJ personnel would not discuss the existence of specific informants with PSI staff), an "authorization" problem concerning alleged ghostworker George Argie, and a "sufficiency of proof" problem, two defendants, Harold Friedman and Anthony Hughes, were dropped from the case in April, 1985. This left only Jackie Presser as a potential defendant, with Allen Friedman and John Nardi, Jr. as the predicate ghostworkers.[11] David Margolis established June 29, 1985 as a target date for an indictment against Presser and informed John Climaco, leading to a conference in Washington on June 11, 1985.

At this time Climaco informed the prosecutors that FBI agents had authorized his client's conduct regarding the employment of Allen Friedman and John Nardi, Jr. The prosecutors asked for details and Climaco returned for another conference on June 17, during which he named specific FBI agents and related what the agents had told Jackie Presser about the employment of Friedman and Nardi.

The Department of Justice attempted to corroborate Climaco's account by conducting interviews with the three key FBI agents: Martin McCann, Patrick Foran, and Robert Frederick.[12] These interviews were conducted seriatim, on June 20, by OCR Deputy Chief Paul Coffey, Cleveland Strike Force attorneys Steven Olah and Stephen Jigger, FBI Labor Racketeering Unit Chief James Moody, and FBI agent Ed Ball.[13]

The agents basically corroborated Climaco's account of events. PSI interviews indicated that the agents stated that John Nardi, Jr. was placed on the Local 507 payroll in 1972 in order to prevent warfare between competing organized crime factions in Cleveland, specifically the LCN faction which was headed by John Nardi, Sr., and the organized labor faction headed by William Presser. Nardi, Sr. and William Presser allegedly made the deal to have the Teamsters hire Nardi, Jr., but it was Jackie Presser who had to sign Nardi's salary checks and deal with the situation. Martin McCann allegedly claimed that Presser complained that Nardi was not working, but McCann had urged Presser "not to make waves," and to keep him on the payroll.[14] However, after Nardi, Sr. was killed in 1977, the rationale for keeping his son on the union payroll disappeared, and Presser, with the concurrence of the FBI agents, removed Nardi from the payroll (although it took 1½ years to do so).

Allen Friedman's hiring as a ghost employee stemmed from the merger of Friedman's Local 752 with Local 507 in 1976. The agents told the DOJ/FBI interviewers that Presser did not like Friedman and did not wish to deal with him, but FBI Agent Patrick Foran (for one) allegedly advised Presser to keep Friedman on the books for several reasons, among them an apprehension that Friedman, who allegedly had an unpredictable temper, would react violently if he was not kept on the payroll. Whenever Presser indicated his displeasure with this arrangement, the FBI agents (especially Foran) allegedly told him not to "rock the boat" and to maintain the status quo, which continued until 1981.[15]

Given these revelations by the agents, DOJ decided to drop the Presser ghost employees case. Although there was some skepticism expressed within DOJ concerning the truthfulness of the agents' statements, particularly by the Cleveland Strike Force attorneys who maintained that a prosecution should go forth, OCR personnel in Washington felt that Presser's criminal intent was negated if his actions were actually authorized, and if not, the prospect of trying to convince a jury that FBI agents had been lying, based on the evidence then available, was not a good risk.

Based on the interviews we have conducted, the Subcommittee staff is satisfied that the Department of Justice's decision not to prosecute Presser was based on its evaluation of the impact of the agents' authorization claims.

If the agents' claims were true, they raise serious questions concerning internal FBI procedures and inter-agency coordination. Moreover, the Department's assessment of the agents' stories had substantial consequences beyond the decision to decline prosecution of Presser. These included additional costs, frayed relations between federal agencies, extensive negative public reaction and speculation (leading to among other items, this Congressional investigation), and its effect on other prosecutions. Allen Friedman and John Nardi, Jr. both were convicted on ghostworkers charges and Friedman spent approximately one year in prison for this offense. Following the agents' revelations and the dropping of the Presser case in 1985, both the Friedman and Nardi cases were dismissed in the U.S. District Court, because the Department of Justice was unwilling to reveal any factual details to the court that might compromise the FBI's informant program.[16]

However, there remains the issue of whether the agents were telling the truth to the DOJ/FBI interviewers. In April, 1986 the Los Angeles Times reported that a federal grand jury under the auspices of DOJ's Office of Professional Responsibility had received information indicating that the agents had lied regarding statements they had made about the authorizations, and thereby misled the prosecutors. If this is the case, questions emerge concerning the agents' motives for fabricating their stories and the prosecutors' judgment in basing subsequent decisions on these stories.

There was evidence that the agents' authorization claims were not credible. For example, PSI staff learned that there is no written record of the Friedman and Nardi authorizations in the FBI's files (as there is for the Argie authorization). The agents claimed that at the time of their actions there was no requirement to memorialize their authorizations in writing under Department of Justice guidelines. It should also be noted that the written record of the Argie authorization was not made contemporaneously with the actual conduct. The authorization was allegedly given in 1978 while the written record is dated November, 1983 and the written record was not drafted by any of the agents, but by FBI Labor Racketeering Union Chief James Moody.

Further, on July 3, 1984, Paul Coffey and James Moody interviewed the same three FBI agents, along with two others (Roy McKinnon and Fred Fehl), after DOJ had learned of the alleged Argie authorization and an "informant problem."[17] The agents confirmed that there had been authorization to place Argie on the Local 507 payroll, but they stated that this was done to prevent harm to an unnamed individual.[18] Coffey asked the agents (in July, 1984) if there were any other authorization problems (besides Argie) which DOJ should be aware of, with the agents having complete knowledge at this time of the identities of the potential defendants in the investigation. At this time the agents made no mention whatsoever of the authorizations for Friedman and Nardi.

When asked in June, 1985, why they had not said anything a year earlier, the agents' responses ranged from a shrugging of the shoulders to a suggestion that Paul Coffey should have "read between the lines" of what was said in 1984. Coffey stated to PSI staff that he is certain that his question to the agents was clear enough and broad enough to elicit a positive response.

The Subcommittee's staff has not reviewed the internal investigation by DOJ's Office of Professional Responsibility. What the eventual findings of that investigation will be and whether the findings of that investigation should have been uncovered by the prosecutors prior to declining to prosecute Presser and dismissing the Nardi and Friedman cases remains an open question at this time.

B. LACK OF INTER-AGENCY COORDINATION

The Organized Crime and Racketeering Strike Forces were established in major cities around the country in order to pool the resources of various federal law enforcement agencies and maximize the effort against organized crime. Information gathered by PSI staff indicates that the Strike Force concept was distorted in the ghostworkers investigation.

Federal efforts to combat organized crime began in the office of the Attorney General in July, 1954. At that time, the Attorney General established within the Criminal Division an Organized Crime and Racketeering Section (OCR) to:

-- coordinate enforcement activities against organized crime;

-- initiate and supervise investigations;

-- accumulate and correlate intelligence data;

-- formulate general prosecutive policies; and

-- assist Federal prosecuting attorneys throughout the country.

In 1966, federal law enforcement officials were directed to review the national program against organized crime and the Attorney General was designated to be the focal point for developing a unified program against racketeering. Because conventional methods of law enforcement had proven ineffective against organized crime, OCR established 18 Federal strike forces between 1967 and 1971. The purpose of the OCR strike forces was to coordinate all of the various federal law enforcement efforts against organized crime through a single prosecutive office that was staffed with highly-trained career prosecutors. Federal organizations participating in the Strike Force program include: ATF, U. S. Customs Service; Department of Labor; DEA; FBI; Immigration and Naturalization Service; IRS; Securities and Exchange Commission; U. S. Postal Service; U. S. Marshals Service; and U. S. Secret Service.

The GAO reported in 1981 that the Strike Forces obtained about 83 percent of their assignments from investigations conducted by the four law enforcement agencies participating in the program (ATF, DEA, FBI and IRS). The FBI supplies approximately 55 percent of all cases for prosecution because of its broad jurisdiction in areas controlled and dominated by organized crime activity. Other agencies, such as the Securities and Exchange Commission, Postal Service and Secret Service, investigate organized crime cases if a violation within their jurisdiction occurs or on behalf of the Strike Force or primary investigative agency. Participating law enforcement agencies generally initiate investigations after identifying criminal activity. The investigating agency determines the stage at which to bring an investigation to the Strike Force's attention. The investigative agency's representative to the Strike Force discusses the investigation with the Strike Force attorney, who decides whether or not it is a Strike Force matter. In some instances the matter may be referred to a U. S. Attorney's Office or to State or local authorities.

Under the federal government's strike force effort, the Labor Department must coordinate its efforts with the Justice Department. During the time of this investigation, the Labor Department's work in the Strike Force program was carried out by the Office of Organized Crime and Racketeering (OOCR) within the Office of Inspector General (OIG) (in 1984, this office was renamed the Office of Labor Racketeering (OLR)). The OLR agents, while under the administrative control of the Inspector General, work almost exclusively on investigations related to Justice's organized crime Strike Forces. If a Labor investigation does not meet the Strike Force's definition of organized criminal activity or is otherwise determined not to be within an OLR priority area, it is then reassigned to a local U. S. Attorney's Office.

During the ghostworkers investigation, agencies under the Strike Force umbrella did not share crucial information. The most striking examples involve information in the possession of the FBI office in Cleveland and/or FBI headquarters pertaining to Jackie Presser's relationship with the FBI.

As detailed in the previous section, FBI agents in Cleveland told DOJ and FBI superiors in both 1984 and 1985 that "authorizations" had been given to place certain individuals, or keep certain individuals, on the Local 507 payroll. The agents made these admissions only in response to direct questions. If these admissions are truthful, the agents, or other FBI personnel's, failure to divulge these facts to anyone outside the FBI prior to these interviews, despite long term knowledge of the ghostworker (and other) investigations against Presser, belies the Strike Force concept.

The FBI's refusal to become actively involved in the ghostworkers investigation, despite several express invitations from the Department of Justice, has no bearing upon their responsibility under the Strike Force concept to share relevant informaton. In particular, the failure of the FBI agents to reveal the alleged authorizations before John Nardi, Jr.'s guilty plea, Allen Friedman's conviction, or the start of Friedman's prison term, are difficult to understand.

Other examples of poor coordination follow:

-- Officials of the Cleveland FBI office may have, on several occasions, misled Cleveland Strike Force attorneys when asked about Jackie Presser's relationship with the FBI.[19]

-- When the Strike Force asked the FBI office in Cleveland for background information on Allen Friedman (prior to Friedman's trial), the FBI reported that it had none. It was later learned that Friedman had been contacted by the FBI concerning an extortion scheme, and the FBI failed to provide the Strike Force with this information or any statements made by Friedman. PSI also learned that even basic documents such as arrest records were not provided by the FBI.

-- DOL OIG personnel told PSI staff that the FBI repeatedly sought information on the status of the ghostworker investigation, but the FBI never provided information. The FBI specifically denied DOL OIG access to FBI files.

-- When the FBI learned that Nardi had possibly solicited a bribe from Presser to change his grand jury testimony, it (FBI) insisted that the DOL OIG not be informed. Nardi at the time was one of DOL/OIG's principal witnesses in the ghostworkers investigation.

-- On June 18, 1983, Cleveland FBI Special Agent in Charge Joseph Griffin sent an Airtel to headquarters which reportedly suggested a declination of prosecution in the ghostworkers case. Despite requests to the FBI, PSI has not been given access to this Airtel and does not know why it was sent nor what follow-up action FBI headquarters took. However, there is no indication that the FBI office in Cleveland discussed any similar concerns with the Strike Force (nor with DOL OIG investigators).

-- The Department of Justice OCR Section also failed to share relevant information. Section Chief David Margolis decided in early 1985 to cut off the flow of all information regarding the ghostworkers investigation to the DOL OIG (except for scant items provided to the Inspector General, J. Brian Hyland), despite the fact that the OIG office conducted the entire investigation.[20] Margolis told PSI staff that he feels this decision was a correct one, and it was done primarily to minimize media "leaks" concerning the investigation, a situation which plagued the case throughout its existence.[21] Margolis added that, by early 1985, the field investigation had been completed and additional work would only involve procedural and tactical decisions by DOJ.

-- Even within DOJ OCR, Margolis and Deputy Chief Paul Coffey did not keep Cleveland Strike Force attorneys fully apprised of developments, such as the discovery of the Argie authorization problem in 1983 and other informant-related problems. Coffey and Margolis told PSI staff that they did not wish the Strike Force to become "tainted" while the investigation was still ongoing.

In addition to incidents involving the non-sharing of information by the FBI, allegations have also been made that the FBI engaged in deliberate attempts to obstruct and undermine the ghostworkers investigation.

C. POSSIBLE FBI OBSTRUCTION

Interviews conducted by PSI staff indicated that relations between the FBI and DOL OIG offices in Cleveland have been strained for years to the detriment of Strike Force activities.

According to Cleveland Strike Force prosecutors, FBI personnel in Cleveland have always felt that DOL OIG investigators should not be involved in criminal investigations of potential labor-related violations. Rather, DOL OIG should, according to the FBI, restrict themselves to audits and other related file reviews, in conjunction with FBI criminal investigations.

However, the FBI's position is contrary to the intent of Congress, as expressed in the establishment of the Office of Organized Crime and Racketeering within DOL OIG, in 1978 and the passage of the Labor Management Racketeering Act of 1984. (See appendix which sets forth exchange of correspondence regarding interpretation of this Act.) Moreover, Strike Force prosecutors have stated that the FBI in Cleveland has shown no inclination to pursue labor racketeering cases.

PSI staff also learned that relations between these offices in Cleveland have been strained due to personality conflicts and a general feeling of distrust within the FBI office for other Strike Force entities. This distrust was fueled in part by perceived leaks of confidential information in recent years and by criticism of the FBI office in Cleveland for their handling of major investigations which have not been completely successful.

As a result, the Cleveland FBI office has steadfastly refused to work any cases jointly with DOL OIG. More importantly, during the Presser ghostworkers investigation, allegations were raised by DOL OIG that the FBI office deliberately attempted to obstruct the investigation.

These allegations, and the acrimony between the offices, reached a peak in early 1983, following a bribe solicitation incident involving alleged ghostworker John Nardi, Jr. Following this incident, David Williams, then head of the DOL OIG office in Cleveland, drafted a memorandum to then Deputy Inspector General Robert Magee, detailing instances of alleged obstruction by the FBI, including the Nardi incident. Williams' memorandum began:

> "During the period August 1981 to the present, personnel of the Federal Bureau of Investigation have actively interfered with and obstructed progress on the U.S. Government investigation of organized crime labor racketeer Jackie Presser."

Williams alleged that FBI personnel had approached an OIG informant and told him that they knew he was cooperating with the OIG agents. Shortly thereafter, two associates of Jackie Presser who have been linked with organized crime interests allegedly approached the informant and threatened his father and son if he assisted the government against Presser. Williams also alleged that two FBI agents approached Allen Friedman after Friedman told an attorney in Cleveland that he (Friedman) knew of illegal activity at Local 507. The agents allegedly said they came to see Friedman "because they were 'friends' with Jackie Presser."

In another instance, according to Williams' memo, FBI Special Agent Robert Frederick had approached another FBI agent, Don Adams, known to be friendly with one of the OIG investigators. Frederick reportedly asked Adams to use his friendship to gather information on DOL's Presser investigation and to pass it on to him (Frederick).

The memorandum also claims that at one point FBI agents implied that the FBI would not examine allegations of improper conduct against DOL OIG investigators if the ghostworkers case was dropped. Cleveland Strike Force Chief Steven Olah told PSI staff that at one point (during the Nardi bribe incident) he questioned FBI agents as to whether they were more interested in proving allegations against Nardi or against the OIG investigators, but Olah could not recall any implicit (or explicit) deals being offered by the FBI.

Robert Magee, Acting Inspector General for DOL, discussed the allegations contained in the Williams memorandum with David Margolis and Paul Coffey in early 1983, but further action was not taken by either DOL or DOJ.[22]

The Nardi Incident

DOL OIG personnel cited the "Nardi bribe incident," which took place in late 1982 and early 1983, as another example of attempted FBI obstruction of the ghostworkers case. Stephen Jigger of the Cleveland Strike Force told PSI staff that this incident was "an event of some complexity operating on several levels." The basic facts, for which widely differing interpretations have been presented to PSI staff, follow:

According to FBI files, on December 9, 1982, John Climaco visited the FBI office in Cleveland accompanied by John Joyce, who was an employee of Joint Council 41.[23] They explained that Joyce had been approached by Sam Rapisarda, a friend of Nardi's, who proposed a deal: Nardi would be willing to recant his May, 1982 grand jury testimony, which implicated Presser in the hiring of ghostworkers, if Presser would take care of some Ohio race track debts for Nardi and/or pay Nardi some money.[24]

The FBI (allegedly) immediately contacted Strike Force Chief Steven Olah and suggested that Joyce go to Florida to meet with Nardi and secretly record their conversation. If Nardi repeated his bribe solicitation he would be subject to arrest. Olah consented to this arrangement.

During an interview with PSI staff, Olah stated that he consented to this arrangement in the context of it being presented to him as a virtual "fait accompli." The meeting already had been set for the next day, airline reservations had been made, and everything was ready to go. However, PSI staff has obtained information indicating that the FBI had learned of the contact with Joyce more than one week earlier.

Rapisarda's initial contact with Joyce was on November 28, 1982, with a subsequent meeting probably taking place on the next day (November 29).[25] Joyce's best recollection as related during a sworn Subcommittee deposition was that he met, perhaps between his two conversations with Rapisarda, with Climaco and Anthony Hughes. According to Joyce, on the next day (November 30) he, Climaco, and Presser met and former FBI agent Martin McCann was contacted by telephone from Presser's office and asked for advice. McCann suggested contacting the FBI office in Cleveland, and Joyce stated that McCann told him and Climaco to meet with SAC Joseph Griffin that same day, which they did.[26] If Joyce's recollection is correct, the FBI files are wrong and more than one week passed before the FBI informed Olah of the situation. In the interim the FBI completed plans for the Florida operation without consultation with or approval by the Strike Force prosecutors.

The official FBI report of this incident, dated December 14, 1982, states that Joyce and Climaco first came to the FBI on December 9, rather than November 30. PSI staff has not been able to question FBI officials about this discrepancy. This report states that Joyce told the FBI (on the 9th) that he had been contacted by Rapisarda on the 6th in order to arrange a meeting between Joyce and Nardi on the 10th in Florida.

During the meeting on December 10, Nardi offered to change his grand jury testimony to whatever Presser wanted him to say ("I'll go to bat for him one hundred per cent"), or to disappear if Presser desired that, in return for $20,000 (characterized as a "loan") and help with the payment of possible legal fees and bail bond money, as well as assistance with the race track markers. Joyce told Nardi that all he could do was relay the message to Presser.

Upon Joyce's return to Cleveland, Steven Olah requested that the FBI contact Joyce and elicit further cooperation. The plan was to have Nardi fly to Ohio to receive the $20,000 from Joyce. (The money would be provided by the FBI.) Nardi would then be arrested for soliciting a bribe and jurisdiction in the Ohio courts would be facilitated.

Joyce and Climaco declined to re-contact Nardi for this purpose, leading to requests by Olah that Nardi be arrested by the FBI in Florida (on an unlawful flight to avoid prosecution warrant). However, this did not occur allegedly because Climaco and Joyce continued to equivocate on whether they wished to continue with the bribe matter, and because FBI agents in Cleveland delayed arrangements to fly to Florida to personally arrest Nardi.[27]

Nardi was eventually arrested (on January 7, 1983) by Florida authorities for his role in a charity scam. This arrest eventually led to his return to Cleveland and his plea to solicitation and ghostworker charges in March, 1983.

DOL OIG personnel believe that following the Joyce-Nardi meeting, when the FBI learned that prosecutors did not believe the incident would damage the ghostworkers case, the FBI decided not to continue with the operation. (In fact, the case may have been strengthened because by being able to charge Nardi with solicitation of a bribe, more leverage to assure his continued cooperation was available.)

Further, DOL OIG personnel have asserted that the FBI was more interested in damaging the credibility of agents James Thomas and George Simmons than making any case against Nardi. In fact, the FBI prepared two versions of an FBI 302 Report concerning an interview with Nardi in January, 1983, with one version including derogatory statements about Simmons and Thomas. Strike Force Chief Clah told PSI staff that he asked the FBI agents what they were interested in, and he believes that the official FBI files contain only a "sanitized" version of the 302 Report in question.[28]

The "unsanitized" version cites part of the recorded conversation between Joyce and Nardi on December 10, which concerned the DOL OIG investigators assigned to the ghostworkers case, Thomas and Simmons. Nardi explained that they had made promises to him if he provided testimony against Presser, including "taking care of" state criminal charges pending against Nardi and race track markers.[29] The FBI was also concerned about Nardi's remarks that Simmons and Thomas secretly brought Nardi to Cleveland to appear before a grand jury to prevent local authorities from serving him with an outstanding warrant, and that Simmons and Thomas had at one point instructed Nardi not to speak to FBI agents.

However, Paul Coffey minimized the allegations against the FBI when he spoke to PSI staff, stating that the FBI was "terrific" in their handling of the Nardi incident. Coffey emphasized that his only concern was to prosecute Nardi for solicitation and to preserve him as a witness in the ghostworkers case.[30]

OIG personnel have also alluded to interviews conducted by OIG investigators in Cleveland to support a contention that the proposal for a bribe was initiated by Presser and his associates, who reportedly had been pressuring Nardi for months to change his grand jury testimony and refuse to cooperate with the government.[31]

John Nardi, Jr., told DOL OIG investigators (according to their memos) that he had been contacted regarding his cooperation with the government on at least three specific occasions. The first contact came from Nick Nardi, his uncle and an employee of Teamsters Joint Council 41 in Cleveland, who advised his nephew to contact Teamsters attorney Robert Rotatori following his grand jury testimony. John Nardi, Jr. did contact Rotatori, who said he represented Presser and wanted to know what he told the grand jury. Nardi told PSI during a deposition that he was subsequently re-contacted by Nick Nardi, who stated that Rotatori was not pleased that John Nardi, Jr., swore at Rotatori during the telephone conversation, and indicated that Presser was "unhappy" with John Nardi, Jr.

The second specific contact came from an unidentified (by Nardi) individual who told him to contact Presser because it would be worth his while, and Presser would give him (Nardi) an opportunity to disappear if a trial against Presser ever ensued. The third contact allegedly came from Nardi's uncle, Nick Nardi, in November, 1982, wherein Nick Nardi told his nephew that Presser could get bad check charges pending against Nardi in Cleveland dropped if Nardi did not testify against Presser. During his PSI deposition, John Nardi, Jr., again used the phrase "Presser would make it worth my while" in discussing this call. Nardi said that this contact was the "seed" which planted the idea for the bribe solicitation. Nardi also told PSI staff that he was receiving general pressure from members of his family not to testify against Presser.

DOL OIG files also indicate an interview with John Nardi Jr.'s wife wherein she states that the bribe offer came from Presser who had Nick Nardi contact Sam Rapisarda in order to contact John Nardi, Jr.

Nick Nardi, during a deposition with PSI staff, denied making any suggestions to John Nardi, Jr. that he not testify against Presser. He also could not recall any discussions about Nardi's grand jury appearance with either Nardi or his wife, and denied ever talking to Presser about Nardi's cooperation with the government.[32]

Some DOL OIG personnel interviewed by PSI staff have inferred that the Nardi incident was planned by the FBI to obstruct the ghostworkers investigation. Perhaps the bluntest assessment is contained in an OIG memorandum: "Evidence has come to light that in a last ditch effort to stop the Presser indictment, the FBI joined in operation with mob attorneys and organized crime affiliate John Joyce to gather derogatory information on OIG investigators assigned to the Presser case and to neutralize key government witness John Nardi." Since PSI has been denied access to relevant FBI personnel, we are unable at this point to fully evaluate the accuracy of those allegations.

D. AUTHORIZATION ISSUES

As stated previously, the Department of Justice based its decision not to prosecute Jackie Presser on claims made by FBI agents that they had authorized Presser's otherwise allegedly illegal conduct. DOJ personnel have acknowledged that these claims were not corrobated by any entries in FBI files. Based on this information, the staff undertook an analysis of the required procedures for such authorizations to determine whether the FBI followed these procedures in this case. If it turns out that Presser did not actually receive any FBI authorization, this discussion may not be relevant to this case, but may provide guidance in future cases.

The Department of Justice guidelines governing required procedures for the authorization of otherwise illegal conduct are contained in documents concerning the authorization of informants' activities. Although authorizations most often arise in the context of the use of informants, this is not necessarily the exclusive context. The government, however, presumably follows the same authorization procedures whether or not an informant is involved.

1) Guidelines:

On December 15, 1976, Attorney General Edward H. Levi issued a set of guidelines entitled Use of Informants in Domestic Security Organized Crime and Other Criminal Investigations ("Levi Guidelines"). On December 2, 1980, Attorney General Benjamin R. Civiletti issued a revised set of guidelines governing the FBI's use of informants. The revised set, which is still in force, is called the Attorney General's Guidelines on FBI Use of Informants and Confidential Sources ("Civiletti Guidelines").

These guidelines delineate general principles and provide specific circumstances which govern the agent-informant relationships. Pursuant to these guidelines, the FBI derives specific internal policies to be utilized by their agents in dealing with informants. These are tailored to the specific needs and policies of the FBI and are published in their Manual of Investigative Operations and Guidelines (MIOG).

The Department of Justice promptly provided Subcommittee investigators with copies of both the Levi and Civiletti guidelines. Thus, staff is able from at least December 15, 1976 to compare the alleged actions of the FBI agents to the Department of Justice guidelines to determine if they complied with Justice policies. As for actions taken by the agents prior to 1976, the staff has been unable to determine what if any Justice Department guidelines were then in effect.

The Federal Bureau of Investigation refused for over six months to comply with numerous requests from the Subcommittee staff for copies of their internal policies on informants for the relevant time period. Only on January 27, 1986, did the FBI partially comply by providing a copy of their current guidelines, effective January 5, 1981, and a copy of proposed revisions to their MIOG in response to the Levi promulgation contained in an airtel from the Director, dated December 30, 1976.

Subsequently, upon PSI's request, the GAO provided copies of FBI MIOG's dated January 12, 1977 and January 31, 1978, which they had maintained in their files. The GAO also provided a copy of an August 12, 1977 airtel from the Director concerning the Levi guidelines. The following analysis only covers the period from December 1976 to date. PSI does not have any materials predating the Levi guidelines.

2) Authorized Criminal Activities: The 1976 Levi guidelines are almost silent on authorized criminal acts by informants or others. They merely refer to it, in passing, when discussing the instructions to be given to informants. The Levi guidelines state that an informant may not participate in criminal activities "except insofar as the FBI determines that such participation is necessary to obtain information needed for purposes of federal prosecution." They do not indicate who or under what circumstances the FBI would permit such criminal actions. The only limitation appears to be that such participation in criminal acts must be in conjunction with "persons under investigation."

The Civiletti guidelines, however, address this issue in some detail. Since 1980, a written determination justifying an informant's participation in criminal activities had to be prepared by a "supervisory FBI official," either the Special Agent In Charge of an Office (SAC) or a field office supervisor.[33]

Before permitting the criminal activity, written findings had to justify that:

> (a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury; and
>
> (b) this need outweighs the seriousness of the conduct involved.

For purposes of the 1980 guidelines, there are two types of criminal activities which could be authorized -- "extraordinary" or "ordinary." Extraordinary crimes involve "a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim." (Emphasis added) Ordinary crimes are anything else.

A field office supervisor can authorize "ordinary" crimes. In the Presser case, this would have been Special Agents McCann, Foran, or Frederick, who were all field office supervisors in the Cleveland FBI office's organized crime squad.

Justification for participation in such "ordinary" crimes must be recorded "in writing in advance of any such activity" except in emergency activities where it must be confirmed in writing as soon as possible thereafter. The Special Agent-In-Charge of the office is required to review all such "ordinary" criminal activities "at least every 90 days." This written determination must also be reviewed "annually by FBI Headquarters" and by a "designee of the Deputy Attorney General in a form suitable to protect the identity of the informants."

If the FBI authorized the placing of "ghost employees" on the Local 507 payroll as an "ordinary" crime, the 1980 Civiletti guidelines would have mandated the preparation of a written justification of Presser's involvement in the "ghosting" by the Supervisory Agents. This written determination should have been reviewed every 90 days by SAC Joseph Griffin. On an annual basis, the FBI Headquarters should have reviewed this determination. Then, a designee of the Deputy Attorney General, D. Lowell Jensen, would have reviewed the determination.

FBI Director Webster's letter of January 5, 1981, provided to PSI by the FBI as part of their informant guidelines, confirms this analysis while implying that under the Levi guidelines a Supervisory Agent did not have authority to approve "ordinary crimes". Director Webster states that the Civiletti guidelines, "unlike the Levi guidelines, clearly permit FBI Field Supervisors to authorize informant participation in "otherwise criminal activities" falling within the "ordinary category". Thus, it appears that prior to 1980, any authorization for Presser and others to participate in ghosting could only have been made by FBI personnel above the rank of Supervisor.

During this time period, the FBI MIOG generally conforms with the Attorney General's guidelines. It indicates that the written finding justifying informant criminal activity:

> ...must be documented in the informant's main file prior to the activity, should specify the facts and circumstances relied upon and FBIHQ should be advised of this finding at the time of the submission of the annual letter. (Emphasis added)

Since the amount lost to the union through the ghosting exceeded $700,000.00 it is unlikely that such an offense could be classified as "ordinary." DOJ and DOL officials told PSI staff that the ghostworker case would have been the largest labor union embezzlement case, in terms of money, ever prosecuted. If it was determined to be an "extraordinary" offense, the Civiletti guidelines require a different procedure for approval. Only the Special Agent In Charge can authorize an informant's participation in "extraordinary crimes" and only after he "consults with and obtains the approval of the United States Attorney." The SAC's written determination and a written record of the U. S. Attorney's approval must then be "immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee...." Thus, if the 1980 guidelines are applicable to the Presser situation, SAC Griffin should have made a written determination after consulting with the U. S. Attorney. [34]

As with "ordinary crimes", Director Webster's explanation of the Civiletti guidelines seems to imply that under the Levi guidelines, a SAC could not authorize "extraordinary" criminal activity. Director Webster says that:

> Section F(3) (of the Civiletti guidelines), unlike the Levi guidelines, gives the SAC the ability, following consultation with an appropriate USA (U. S. Attorney), to allow an informant to participate in "otherwise criminal activities" falling within the "extraordinary" category....

Just as with ordinary crimes the post-Levi FBI MIOG's are intent on identifying the responsible FBI employee for authorizing these types of crimes.

The post-Civiletti MIOG does, however, clearly state that after the Civiletti guidelines were promulgated only the SAC could authorize "extraordinary" criminal activity and only after:

> ...the SAC consults with and obtains the opinion of the USA. Consultation with the USA should be in a manner which protects the identity of the informant. The SAC's written determination and the USA's opinion shall be immediately forwarded to FBIHQ.

3) Notification of Appropriate Authorities of Unauthorized Criminal Activity: The two sets of guidelines are almost identical regarding notification. Both state that "under no circumstances shall the FBI take any action to conceal a crime by one of its informants." Both also call for the FBI to notify ("ordinarily") the appropriate authorities when it learns of any informant's unauthorized participation in criminal activity connected with an FBI assignment or commission of a serious crime.

Finally, both state that in "exceptional circumstances" in which notification to local authorities may be inadvisable the FBI shall notify the Justice Department. The guidelines differ only with respect to detail. Civiletti's guidelines call for a specific "procedural route" by which the FBI determines if notification is advisable.

4) Determination of the Advisability of Notification: Twelve words differentiate the two sets of guidelines in this regard. The Levi guidelines state that:

> In determining the advisability of notifying appropriate law enforcement and prosecutive authorities of criminal activity by FBI informants, the FBI and the Department of Justice shall consider the following factors:
>
> a. whether the crime is completed, imminent or inchoate;
>
> b. seriousness of the crime in terms of danger to life and property;
>
> c. whether the crime is a violation of federal or state law, and whether a felony, misdemeanor or lesser offense;
>
> d. the degree of certainty of the information regarding the criminal activity;
>
> e. whether the appropriate authorities already know of the criminal activity and the informant's identity; and
>
> f. the significance of the information the informant is providing, or will provide, and the effect on the FBI investigative activity of notification to the other law enforcement agency.

The Civiletti guidelines read exactly as above except that they delete the underlined portion.

The current FBI MIOG requires that when the FBI field supervisor makes the determination not to advise authorities of an informant's criminal conduct that he "immediately notify FBIHQ which in turn will advise the USDOJ". The Director's cover memo explains the underlying policy reasons for such notification which is borne out in the current Presser investigation:

> Such notification to FBIHQ and USDOJ is merely to ensure that good judgment and sufficient justification exists for not advising an appropriate law enforcement authority of an informant's law violation and will prevent the supervisor's actions from being challenged long after the fact. This aspect of the operation of informants places a great demand on our integrity and professionalism. If a Field Supervisor's determination in these situations is reasonable, they will receive the full support of FBIHQ.

5) Coordination with Department of Justice: The 1980 Civiletti guideines establish a broad policy of coordinating informant activities with the federal prosecutors. It requires that:

> In any matter presented to a United States Attorney or other federal prosecutor for legal action where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

If the FBI determines that certain information must be withheld to protect the informant's identity, it must describe generally the information that is being withheld.

It is ambiguous whether this disclosure requirement deals solely with "matters" that the FBI is presenting to a federal prosecutor or whether it covers any matter that the FBI knows is being presented to the Department of Justice. If the former, then the FBI may have been under no requirement to disclose the role of informants in the Presser case to the Cleveland Strike Force, since the Labor Department presented that investigation to the Strike Force for prosecution.

However, if this strict disclosure requirement applies to any presentation made by any agency to the Department of Justice, it would have mandated the disclosure of relevant information to the Cleveland Strike Force as soon as the FBI learned the Labor Department was investigating Presser and Local 507.

FBI Director Webster's memorandum explaining the ramifications of the Civiletti guidelines does not further illuminate this question about the duty of the FBI to disclose its relationship with Presser to the Justice Department. Webster explains to his agents that this section of the Civiletti guidelines "should not be construed as the development of a partnership between the FBI and USDOJ in operating our informants". He goes on to say that this section merely requires that the federal prosecutor be advised that the informant was used in a particular ~~investigation~~ being prosecuted but not give the identity of an informant. The purpose of this disclosure requirement in the eyes of Director Webster is merely to assist the prosecutor "in protecting the identity of our informants". The Director gives no guidance as to what types of prosecutions he is discussing -- FBI or non-FBI.

We are also not helped by the current FBI MIOG in trying to answer this question. It contains no reference to this section of the Civiletti guidelines.

6) Disclosure To Other Agencies: Both the post-Levi and post-Civiletti MIOGs mandate the "qualified" disclosure of informant information dealing with non-FBI violations.

The 1977 and 1978 revisions of the FBI MIOG state that:

> Information of value provided by informants on non-Bureau violations should be disseminated to interested agencies. The possibility of compromising informants should be considered before any information is disseminated.

The post-Civiletti MIOG includes a more detailed procedure for the disclosure of informant information to other interested agencies:

> (12) Information of value provided by informants on non-FBI violations should be disseminated to interested agencies. Factors to be considered in making such disclosures are:
>
> (a) whether the disclosure would jeopardize the identity of the informant;
>
> (b) the life of an FBI Agent, informant or other persons; or
>
> (c) a major ongoing FBI investigation.
>
> (13) If full disclosure is not made for the reasons indicated, then, whenever feasible, the field office shall make at least limited disclosure to the law enforcement agency having jurisdiction sufficient to apprise it of the specific criminal activity, and full disclosure shall be made as soon as the need for restricting dissemination is no longer present. The action taken and the reason for the action should be documented in the informant's main file.

Even with these various MICGs, it is questionable whether the FBI was required to disclose any informant information concerning the Presser case to either the Labor Department or the Strike Force. All of the MICG's are predicated on the informant information being relevant to "non-FBI violations". Since the FBI considers any labor law violation to be within their investigative jurisdiction, there appears to have been no duty on the FBI to disclose.

7) Sufficiency Of Present Guidelines: One of the issues covered by the staff investigation focused on whether the current authorization guidelines would permit the recurrence of the alleged Presser scenario involving authorizations. Although the answer to this question raises policy decisions beyond the scope of the staff investigation, it is relevant due to some of the explanations for the Cleveland FBI agents' conduct.

Both David Margolis, Chief, Organized Crime and Racketeering Section, and Paul Coffey, his Deputy, advised PSI staff that the Cleveland agents did not feel their alleged "authorizations" were covered by either the Levi/Civiletti guidelines or internal FBI policies. Their reasoning was two-fold.

First, the agents felt that the guidelines and policies were not retroactive. Since their basic arrangement with Presser allegedly pre-dated the Levi guidelines, they were neither under any obligation to retroactively report prior authorizations or to even report post-1976 authorizations since the arrangement had been ongoing. This "grandfather clause" reasoning could forebode similar incidents in the future.

Additionally, Margolis and Coffey alluded to the agents' belief that "ghosting" was not criminal as another explanation articulated for non-disclosure to the Justice Department. The agents reportedly felt that placing an employee on the union payroll, knowing that he would do no work for the union, was not a criminal offense. As such, the agents were arguing that even if the Levi and Civiletti requirements were retroactive, no crime, either "ordinary" or "extraordinary" was being authorized. Again, if such an attitude toward union embezzlement is commonplace with FBI agents investigating labor racketeering cases, results similar to Presser case could reasonably be expected to reoccur.[35]

E. Department of Justice Supervision of the Case

The staff's investigation raised questions concerning the Department of Justice's supervision of the FBI, apart from those raised by the alleged authorizations and the Nardi bribe solicitation investigation discussed elsewhere in this study. In several instances during the course of the ghostworkers investigation, Department of Justice attorneys declined to aggressively pursue information from the FBI, and relied instead on informal responses or procedures inconsistent with the usual methods of obtaining reliable facts. Presumably, the Department did not wish to jeopardize good relations with the FBI. However, this laudable goal appears to have resulted in the Department dealing with the FBI as an autonomous entity to which it had to defer, rather than as part of the Department under the jurisdiction of, and fully accountable to, the Attorney General.

Department of Justice representatives acknowledged in staff interviews that they were long aware of rumors that Jackie Presser had a "relationship" with the FBI. Therefore, the reasonable course would have been for the Department, at an early point in the Presser investigation, to fully explore this putative relationship with the FBI. This was not done.

Indeed, the first attempt by the Department to ascertain any direct information along these lines came only after the search of L.U. 507 in October 1982, when the case was already well along. And that attempt fell far short of an investigative probe. Instead, during the course of a telephone conversation with SAC Joseph Griffin, Strike Force Chief Steven Olah inquired if Presser was an FBI informant, and Griffin allegedly misled Olah. However, although Department prosecutors had continuing concerns about Presser's relationship with the FBI, they did not confront the FBI at this time.

Subsequent events should have alerted the Department prosecutors to the wisdom of conducting a more formal probe into the FBI's alleged relationship with Presser. Yet, the Department appeared mostly content to let the FBI tell it what the FBI wanted it to know; when the Department did seek information from the Bureau, it did so in an informal manner not designed to elicit the hard facts necessary to the prosecution.

David Margolis advised PSI that in November or December 1983, an FBI representative told him that there was an "informant problem," and indicated that the FBI had previously so advised Department "higher-ups." Margolis recalled that two weeks after this initial contact, the FBI returned, with a concern that the Strike Force was proposing to immunize George "GiGi" Argie as a witness in the ghostworkers case without prior consulation with the FBI. After investigating, Margolis and/or Paul Coffey told the FBI that Argie had already testified before the grand jury pursuant to a grant of immunity, and that the Cleveland FBI office had been consulted and raised no objection. At this point, the FBI told Margolis and Coffey that Argie's placement on the union payroll as a "no-show" had been authorized by the FBI.

It would seem that the FBI's revelation about the Argie authorization should have motivated the prosecutors to insist that the FBI now formally assure the Department that it was not withholding other critical information -- in particular, information concerning Presser. The ghostworkers investigation had been ongoing for an extensive period, and the FBI had only just informed the prosecutors about an authorization to put a ghost on the union payroll -- the very type of conduct under scrutiny. Nonetheless, both Margolis and Coffey told the Subcommittee staff that neither of them questioned the FBI at that time about other authorizations.[36] Again, it appears that the Department was unwilling to inquire into the Bureau's activities and thereby risk a confrontation. This perspective existed even though several DOJ attorneys have acknowledged the paramount importance and priority of the ghostworkers investigation.

Approximately six months later, on June 27-28, 1984, Coffey reviewed FBI files relating to the informant problem in the office of FBI agent James Moody. Moody informed Coffey that he was not showing him the entire informant file. Coffey asked what guarantee he had that he was being shown everything he needed, and Moody responded, "you have my guarantee." During his review, Coffey saw non-contemporaneous memorializations of the Argie authorization that were dated November 7 and December 16, 1983. Based on information in the files, Coffey requested interviews with certain FBI agents.

On July 3, 1984, Coffey travelled to Cleveland and interviewed former agents Martin McCann, Fred Fehl, Roy McKinnon and current agents Patrick Foran and Robert Frederick. Moody sat in on the interviews. Rather than using accepted investigative methods that would document key information for the prosecution, Coffey approached the interviews in an informal manner.

The interviews were joint -- all of the agents and Coffey and Moody were together. Coffey did most of the questioning, and he was non-confrontational. Moreover, Coffey told us that he was the only one to take notes during the course of the interviews, and most of the time he was talking, not writing. He did not request the agents to put their statements in writing. The staff has been told that this failure to make a reliable record led to questions later being raised about exactly what was said during those interviews. In any event, according to Coffey, he did ask the agents whether there were authorization problems with respect to Nardi and Allen Friedman similar to the Argie situation. Coffey reported to us that he was satisfied with the agents' responses.

Despite Coffey's expressed satisfaction with the agents' responses, as late as April 1985, the Department of Justice suspected that it still did not know the full scope of the FBI's relationship with Presser or the FBI's awareness of ghostworkers on the union payroll. PSI learned that the Department of Justice suspected additional FBI authorizations as of April, 1985 -- three years into the investigation and two months before Presser's attorney, John Climaco, reported the existence of such authorizations to the prosecutors.

At that time, Assistant Attorney General Stephen Trott had asked for a draft plea agreement describing how the government could hypothetically utilize Presser as a witness. This idea surfaced during strategy sessions involving Trott, John Keeney, David Margolis and perhaps others.

On April 16, 1985, Strike Force Attorneys Olah and Jigger, in response to an assignment by Trott, submitted a draft plea agreement with a cover memo laying out the essential conditions for Presser's cooperation. Following the list of six "essential conditions," the memo states that the proposed settlement may require modification after a discussion of factual and legal issues, "specifically the degree of the FBI's knowledge of ghosting."

A DOJ official explained this portion of the memo by stating that the Department of Justice was well aware of Presser's relationship with FBI agents in Cleveland. It was further stated that it is usual in these relationships for agents to "authorize some sort of conduct." Therefore, the Department of Justice "suspected something lurking in the background" and speculated that this might include some degree of ghosting authorization. Given this speculation, it is difficult to understand why the Department of Justice did not take appropriate steps to confront the FBI with its suspicions and determine, once and for all, if the FBI had authorized conduct for which the prosecutors were preparing to issue an indictment or extract a plea agreement. Proper Department oversight of the FBI should not place Department prosecutors in the position of suspecting that "something may be lurking in the background" within the knowledge of the FBI. The memo and the explanation appear to be telling evidence of the Department's apparent "hands-off" attitude toward the FBI.

Even after Presser's attorney, John Climaco, alerted the prosecutors to the alleged authorizations, the Department's apparently deferential attitude toward the FBI prevented a swift and sure assessment of the damage to the prosecution. When Climaco first advised on June 11, 1985 that the FBI had authorized his client to place ghostworkers on the union payroll, the Organized Crime Section attorneys told Climaco to come back with the details -- names, dates and places. They did not make any independent effort to confront the FBI and ascertain the veracity of Climaco's allegations. Margolis told PSI staff that he was not concerned by the June 11 revelations, as he was confident that Climaco would fail to return with any facts to support his allegation. Six days later, Climaco returned with the details, and the prosecutors decided to reinterview three of the agents previously interviewed in July 1984.

On June 20, 1985, Coffey, Jigger, and Olah, accompanied by the FBI's Jim Moody and Ed Ball (who was the official note-taker) reinterviewed agents McCann, Frederick and Foran. The tenor of these interviews, as described to PSI staff by the DOJ participants, was not vigorous.

Coffey told PSI staff that he did not want the interviews to be too "confrontational" because the agents might leave and thereafter put together statements to protect themselves. Coffey did not want the interviews to be vehicles for opening old wounds -- he figured they could deal later with the animosities. As a result, although he permitted Jigger and Olah to ask questions, he did not want them to indicate that they did not believe the agents. Coffey himself confined his questions to the agents' direct knowledge.

Jigger and Olah told the staff that the agents were vague and evasive about why they had not reported the Presser authorizations during their 1984 interviews. Coffey also conceded that the agents' explanations of discrepancies were not very good. He advised, however, that the Department attorneys did not press the agents and did not want to make one agent a witness against another.

In Coffey's view, the interviews were conducted for the purpose of making prosecutorial decisions; he was not conducting a review for the Office of Professional Responsibility. However, by not probing the agents' stories and by not subjecting them to an intensive and even adversarial cross-examination it would appear that the Department of Justice could not be certain that the agents' statements would "hold up" and thereby preclude a prosecution. In fact, Olah and Jigger did not believe that the agents had been credible during their interviews even in the non-confrontational context of those sessions.[37] It appears that the Department, were it not dealing with the FBI, would have further probed this issue prior to declining to prosecute Presser and subsequently dismissing the cases against Jack Nardi and Allen Friedman. Indeed, recent reports indicating that the agents may have fabricated their stories underscore the Department's failure to have made greater efforts in 1985 to ascertain the agents' veracity.

Following the interviews, the FBI prepared 302 reports, and the agents' statements were based upon these 302's. The FBI thus was able to exercise its discretion in determining what information was inserted in the 302's, and the agents in turn were able to extract the information they felt pertinent in drafting their statements. Jigger told the staff that "important questions" were not included in the agents' affidavits. Coffey confirmed that the agents' written statements are shorter than what was said during the interviews. He felt, however, that they were adequate for purposes of the prosecutive decision. Again, however, the Department's apparent deference to the FBI resulted in a less complete record than the Department presumably would have demanded in any other circumstances.

It is possible that the Department's attitude toward the FBI during the ghostworker investigation ultimately would not have changed the course of events as they unfolded. However, the evidence recounted above suggests that apart from the precise problems which emerged during the Presser investigation, the Department of Justice may have a flawed supervisory relationship with the FBI. Unless the Department exercises its authority and responsibility to direct the FBI and demand a full accounting of the FBI's activities as they impact on other work of the Department, the same types of problems that occurred during the Presser case may well recur.[38]

F. SPECIAL TREATMENT

The Subcommittee received allegations concerning special treatment or favoritism shown to Jackie Presser or members of his family by the government. Two of these issues, political influence and authorization, have been previously discussed. This section briefly focuses on three other areas of alleged special treatment. They are:

1) The Department of Justice allegedly placed unnecessary and unusual restrictions upon the search of Jackie Presser's Local 507 office during the ghostworker investigation;

2) DOJ prematurely closed the Hoover-Gorin investigation in 1982;

3) The Department of Justice prematurely closed or declined to prosecute numerous other cases against the Presser family and their associates since the early 1970s.

1) The Search of Local 507

The idea to search Local 507 first originated with former Strike Force Attorney Steve Canfil in late August, 1982. The purpose of the search was to obtain union records which the union had repeatedly refused to turn over to the grand jury in Cleveland. On September 30, Canfil prepared a draft search warrant for the entire union hall. Paul Coffey mandated extensive changes, restricting the search of the offices of Jackie Presser and other areas of the union hall. This limitation has given rise to allegations of favorable treatment (although the search ultimately included Presser's office as a federal magistrate insisted upon inclusion of the office in the initial warrant and a second warrant was obtained on the day of the search).

Department of Labor agents executed the search warrant. However, PSI staff learned that Coffey orally placed restrictions on the sequence of areas to be searched, reserving Presser's office until last. As the agents moved through the union hall, Strike Force prosecutors were to call Coffey and advise him of the progress.

Coffey told PSI staff that at the time of the search, the government was under attack in the local paper. John Climaco was claiming, in the context of the Hoover-Gorin investigation, that the Department of Justice was trying to frame his client and that the OIG agents conducting the search were vindictive. It was only four days after the Hoover-Gorin case was closed, and

Coffey wanted to make sure "we were on the money." Coffey wanted evidence from Harold Friedman's office before going into Presser's office, in order to later withstand an attack on the "bona fides." He said that they always intended to search Presser's office but wanted to do it in a way that would avoid challenges to the government's integrity.

2) Closing Of Hoover-Gorin Case

The Subcommittee staff also reviewed the timing of and circumstances surrounding the closing of the Hoover-Gorin case, based on allegations that this investigation was prematurely closed without proper consultation with the investigative agency, the Department of Labor, Office of Inspector General. In addition, concerns were raised about the propriety of David Margolis announcing the closing of this probe via a letter to John Climaco that was also forwarded to and published by the Cleveland Plain Dealer.

The Hoover-Gorin investigation was spurred by a series of stories run in the Cleveland Plain Dealer on August 23, 24 and 25, 1981. The allegations printed in the paper stated that Jackie Presser was the recipient of approximately $300,000 in illegal kickbacks from Hoover-Gorin and Associates in return for the firm's obtaining a $1.3 million public relations contract with the International Brotherhood of Teamsters.

Department of Justice records indicate that Hoover-Gorin and Associates was incorporated one week before it obtained the Teamsters contract and was headed by George "Duke" Hoover, a man without any appreciable public relations or advertising experience. Hoover's last venture in advertising had been a one year partnership that produced gross annual sales of $20,000.

The middleman for arranging the contract with the Teamsters and the alleged payoffs was Harry Haler, a notorious con artist. Haler, who agreed to cooperate with the Labor Department investigation, alleged that the "prerequisite" for awarding the contract was an agreement to pay Jackie Presser $16,500 per month. In addition, as part of the arrangement, Cleveland organized crime figures Tom Lanci and Anthony Liberatore were placed on the payroll of Hoover-Gorin although Haler acknowledged they did not work for the company. Liberatore subsequently told the Labor investigators that Lanci kicked back a portion of his $2,000/month salary to Jackie Presser.

Most of Haler's participation in the advertising deal ended in 1974 upon his conviction for an unrelated offense. In addition, on April 30, 1974, the Teamsters Union cancelled the contract. However, on July 30, 1974, Frank Fitzsimmons, then International President of the Teamsters, and Hoover signed a new contract with Hoover-Gorin.

This contract differed considerably from the first contract. In the second contract, Hoover-Gorin's retainer fee was lowered from $350,000 to $50,000 and a new method of payment was established. Whereas under the first contract, Hoover-Gorin disbursed monies directly to advertising vendors, the second agreement called on Hoover-Gorin to contract with companies and then forward invoices to the Teamsters who would then pay the vendors directly.

The DOL investigators, George Simmons and James Thomas, advised the Subcommittee staff that their goal was to confirm the allegations of Haler dealing with the first Hoover-Gorin contract. They felt that they had successfully done so by interviewing a number of individuals who confirmed many of Haler's statements. However, since Haler's involvement ceased for all intents and purposes in 1974, that portion of the case, even if conclusively proven, would be beyond the five year statute of limitations.

Thomas and Simmons acknowledged that this was a problem but felt that a thorough review of the second Teamster/Hoover-Gorin contract would reveal evidence of additional kickbacks. Initially, it was thought that in the second contract Teamster funds flowed from the International to Hoover-Gorin and/or one or more of its contractors and then back to Jackie Presser through Duke Hoover.

By February 1982, a review of the Labor Department records reveal that this theory, though not disproven, had for the time being been discarded. Based upon a review of the Hoover-Gorin records and from informant information, the Labor Department believed that various loans were being used as the conduit for kickbacks. It was theorized that Duke Hoover would obtain bank loans in his own name and use their proceeds to pay Presser. Teamster funds flowing to Hoover-Gorin and/or to one or more of its contractors would then be used to pay back these personal loans. A limited review of the Labor Department records identified at least three suspicious personal loans, one of which had been twice renewed in the amounts of $45,000, $25,000 and $50,000.

Thomas and Simmons admitted to the staff that neither this theory nor attempts to identify a "Harry Haler surrogate" who functioned as a conduit of Teamster funds were ever fully investigated. They claim that the Cleveland Strike Force lost interest in the allegations once the ghostworker investigation started around April, 1982. Attempts to convince the Strike Force to immunize Duke Hoover, whom the agents felt was a key witness, failed. Additional attempts to call other witnesses before the grand jury or otherwise interest the Strike Force in the case also met with little success.[39] As a result, by the time the case was officially closed on October 4, 1982, only Harry Haler, James Thomas and George Simmons had testified before the grand jury. In addition, only eight of the 69 grand jury subpoenas issued had been "returned" to the grand jury.

Simmons and Thomas told the staff that they became aware of the closing of the Hoover-Gorin case "after the fact" from Stephen Jigger. They recalled that sometime in either late September or early October 1982, Jigger commented on the closing of the case in an off-handed manner during a meeting concerning additional grand jury subpoenas. This was confirmed by Strike Force Attorney Steve Canfil who added that he thought the Labor agents were somewhat surprised to hear that the case had been closed by the Strike Force without their knowledge.

David Williams, the Agent-In-Charge of the Cleveland Labor Department at this time, told staff that he had never been consulted about the closing of the Hoover-Gorin case. He said that he was shocked when he read about the declination in the Cleveland Plain Dealer and saw Margolis' letter to John Climaco. Stuart Eder, the Deputy in the Office of the Inspector General with responsibility for overseeing the region that included the Cleveland Strike Force, also indicated that he had received no prior notification of the closing of Hoover-Gorin from Justice.

All of the Labor Department personnel interviewed by PSI stated that, at the minimum, prior notification of the closing of a case by the Justice Department is standard operating procedure. Usually a formal conference occurs between the investigative agency and the Strike Force attorney to discuss the intentions to close the case as well as to give the investigative agency a chance to justify its continuation. In the Hoover-Gorin matter, neither took place.

In addition to being unaware of the closing of the case, the Labor Department personnel interviewed claimed they had no prior knowledge of the Margolis letter to Climaco and the Cleveland Plain Dealer. All stated that they first became aware of the letter when it was published in the paper. Additionally, they unanimously indicated that they were unaware of any other cases where the Department of Justice notified either defense counsel or the press of the closing of an investigation.

David Margolis claims that he did not close the Hoover-Gorin case. Margolis stated his recollection that Coffey told him the matter was closed because the statute of limitations had run. Margolis believed that the case was closed by the Cleveland Strike Force.

Coffey, on the other hand, stated that he closed Hoover-Gorin. Coffey explained that the Labor Department office in Cleveland was too small to properly conduct all of the various investigations it had underway. In light of the lack of success in confirming Haler's allegations and the greater potential of success with the "ghostworker" case, Coffey decided to close Hoover-Gorin. The corroboration needed for Haler's story had not been produced.

In Coffey's opinion, Labor could not do both Hoover-Gorin and the ghostworker investigation. Coffey said that he had talked to David Williams in general terms about the manpower problems in Cleveland but probably not specifically about closing Hoover-Gorin. Coffey also indicated that the Cleveland Strike Force concurred in the decision to close this case.

Steven Olah, on the other hand, claims that he made the decision to close Hoover-Gorin even though he admits that the investigation had clearly not run its full course. For instance, Olah acknowledged that no decision had been made on Duke Hoover's testimony. Olah stated he closed the case because of inadequate Strike Force and Labor Department resources, the inability to corroborate Haler, statute of limitation problems and the likely success of the ghostworker probe. Olah added that at the same time he made this decision, John Climaco was barraging the Strike Force with letters about the case which impugned the Labor Department agents' motives and Haler's credibility.

Olah also stated that regardless of what the Labor officials now state, he did discuss his decision to close Hoover-Gorin with them. He was also certain that they were advised of that decision before Margolis' October 6th letter. Olah could not recall how long before October 6th he discussed the matter with Labor nor with whom he discussed it. He does recall that Labor was not pleased with his decision.

Stephen Jigger, who was the attorney assigned to the case, admitted that after the ghostworker investigation began in early 1982, he "back-burnered" the Hoover-Gorin case. But Jigger's best recollection is that Coffey and Margolis actually made the decision to close the case without seeking an express recommendation from the Cleveland Strike Force which would be the normal procedure before closing a case. Jigger also told the staff that he and Olah did not agree with the decision, but neither did they object to it. Jigger recalls a meeting with the Labor agents and Olah where they informed them of Margolis' decision. This was about the time of the Margolis letter. Jigger added that the Labor agents were not pleased by either the decision or the Margolis letter.

Margolis explained that he wrote the letter as a response to adverse publicity toward Presser that the Justice Department in part created. Margolis told the staff that he received a request from Climaco for a letter advising him of Justice's decision to close the investigation. Climaco also requested that a copy be given to the Cleveland Plain Dealer. Margolis felt that since a reasonable person could conclude that the Justice Department through a comment by Olah had announced the opening of the investigation, the fairest thing to do would be to publicly announce the closing of the investigation.[60]

The Justice Department usually does not announce either the opening or closing of a Strike Force investigation but Margolis thought this was a special case. Margolis brought the matter to John Keeney's attention and he concurred in the decision. On October 6, 1982, the Margolis letter was sent to Climaco with a copy forwarded to David Hopcraft, Executive Editor of the Cleveland Plain Dealer. The full text of the letter is:

> In regard to your letter of September 30, 1982, concerning an article which appeared in The Plain Dealer on August 25, 1981, alleging that Jackie Presser took a kickback from

> Hoover-Gorin & Associates, Inc., please be advised that the Department of Justice considers this matter closed.

Paul Coffey recalls the discussions he had with Margolis about the letter. Coffey wanted the Hoover-Gorin case put to rest and he recommended that Margolis write the letter. Coffey also stated to the staff that he had no problems with the Margolis letter since Coffey felt the government was responsible for the publicity since its chief witness, Harry Haler, was continually talking to the press.

Nevertheless, Coffey did not recall what specifically precipitated Margolis' letter to Climaco. Coffey did not know if it was Climaco's September 30, 1982 letter to Olah or the pending lawsuit against the Plain Dealer. Coffey said that there was "nothing magical" about sending the letter on October 4th.

In conclusion, Margolis added that if the Labor Department had a complaint about the closing of Hoover-Gorin there was a standard procedure for voicing its concerns. Since it did not, in Margolis' view, the current comments amount to nothing other than "sour grapes".

3) Other Presser Related Cases

During the course of the Subcommittee probe, the staff became aware of allegations that either the Department of Justice and/or Labor mishandled a number of other investigations involving the Presser family and their associates. The allegations involved ten separate investigations. PSI requested the General Accounting Office conduct to a thorough review of each case. GAO will report to the Subcommittee on their progress thus far.

G) I.R.S. RELATIONSHIP

On August 24, 1981, the Cleveland Plain Dealer reported that William Presser, Jackie Presser and Frank Fitzsimmons were informants for the IRS from 1972 through 1974. A few days later on August 31, 1981, Time Magazine revealed additional details concerning this relationship and its alleged ties to then-President Nixon and the Justice Department. Time alleged that the Pressers, in person and through an intermediary, Harry Haler, offered information on any top Teamster official to the Justice Department in return for dropping the charges then pending against William Presser in Cleveland. Some of the Teamster officials mentioned as offered by the Pressers included ex-Teamster president Hoffa, St. Louis Teamster boss Harold Gibbons, Allen Dorfman, etc. Allegedly, the Justice Depatment asked for information on a little-known casino operator, Jay Sarno, who had utilized Teamster pension fund loans to build two Las Vegas casino hotels. The Time article also alleged that Fitzsimmons became frustrated with the Justice Department's actions and went directly to President Nixon for help.

The Subcommittee staff was also informed that the entire Organized Crime Section in Washington was aware of this relationship, including its current Chief, David Margolis. Accordingly, PSI was interested in determining who in the Department of Justice was aware of that relationship and were any promises made at that time that may have impacted upon the ghostworker investigation.

As a result, on December 19, 1985, the Senate adopted S. Res. 284, authorizing inspection and receipt of tax-related materials consisting of investigatory files by the Subcommittee. On December 31, 1985, the Committee on Governmental Affairs resolved that the Secretary of Treasury, pursuant to 26 U.S.C. Section 6103 (f)(3), furnish the Subcommittee with the aforementioned material. On January 16, 1986, the material was delivered to the Subcommittee staff for its review. The relevant statute, 26 U.S.C. Section 6103, provides that absent consent from the taxpayer(s), a committee may disclose identifiable tax-related information to the full Senate only when the Senate is sitting in closed executive session.

Based upon its review, and given the decision not to publicly disclose the contents of those files, the staff can state that there do not appear to have been any promises made on behalf of either the Department of Justice or the Internal Revenue Service that could possibly have affected the 1985 decision to decline prosecution of Jackie Presser.

H) COSTS OF GHOSTWORKER CASE

The Subcommittee staff has also attempted to document the costs of the aborted Presser investigation, under the assumption that Presser was, in fact, authorized to place ghostworkers on the union payroll. If this turns out not to be the case, much of this section becomes moot. However, even in this situation there have been additional, unnecessary costs, both monetary and otherwise.

1) Investigative Costs

Two federal agencies were principally involved in the ghostworker investigation -- the Labor Department and the Justice Department. In addition, the federal courts incurred costs for the Allen Friedman and Jack Nardi portions of the case as well as for the convening of a grand jury for approximately three years. GAO will report to the Subcommittee as to the amounts of these costs.

2) Potential Civil Liability

During the course of our investigation, it became apparent that a number of individuals were seriously contemplating suits against the government for its handling of the Presser investigation. The most obvious potential plaintiffs are members of Local 507 who would seek to recover the approximately $700,000 that the FBI allegedly authorized Jackie Presser to embezzle from their union. Allen Friedman, the 60 year old uncle of Jackie Presser, who was incarcerated for approximately eleven months of a three year sentence, has also indicated, through his attorneys, his intentions to sue the government on multiple grounds including violations of his civil rights and negligence on the part of the Justice Department and FBI. Although his damages may not have been as severe since he was never incarcerated, John Nardi, Jr., has also indicated through his counsel that he is considering suit on grounds similar to Friedman. It is impossible at this time to comment on the chances of successful recovery by any of these potential plaintiffs, particularly if it turns out that the FBI agents were lying about the authorizations to employ ghostworkers.

3) The Impact Upon The Law Enforcement Community

Deputy Inspector General Raymond Maria, when questioned by the Subcommittee staff, stated that one of the greatest costs of this aborted investigation was its long term effect upon his and the entire government's labor-management racketeering program. Maria indicated that the basis of his response was the cost of lost investigative opportunities to the government. While the Labor Department was devoting its resources (estimated 22,120 man hours) on the ghostworker case, they were constrained from investigating other allegations of labor-management racketeering. Maria could not quantify this cost but added that it would take a great deal of time to make up for the wasted time and resources expended on the Presser investigation.

Along the same vein, Steven Olah, the Chief of the Cleveland Strike Force, predicted in an April 11, 1985 memorandum additional "immediate adverse local reactions to the federal law enforcement community in Cleveland." Olah predicated his opinion on the fact that federal law enforcement in Cleveland was already suffering from a tarnished image as the result of:

> "a. The indictments and convictions of former United States Attorney J. William Petro and Assistant United States Attorney Paul Gorman for two unrelated crimes involving impropriety in office;
>
> b. The infamous and botched FBI operation corkscrew probe of the Cleveland Municipal Court; and
>
> c. The common perception in Cleveland that Presser and Anthony Hughes will never be indicted because of Presser's political influence."

Olah went on to state that dropping the Presser case in light of these facts would further harm local law enforcement because:

> "a. Any meaningful labor racketeering program is unlikely due to a total lack of interest by the FBI;
>
> b. The exclusion of local labor personnel from information on the status of their case has resulted in their demoralization and the virtual loss of all Strike Force credibility. Explanations to top level labor officials will do nothing to assuage the hostility and resentment of people who have devoted countless hours on a case, only to be told 'you are not entitled to know';
>
> c. Only an indictment, consistent with the publicly known facts will prove that there are no protected individuals. Non prosecution and the inevitable adverse publicity will deter most individuals in the labor movement from bringing instances of wrong doing to the government's attention;
>
> d. The Cleveland Strike Force's hithertofore excellent reputation in this community will be tarnished by the allegation that its work is affected by politial considerations and/or outside influences."

Stephen Jigger, in his January 28, 1985 prosecutive memorandum, echoed Olah's concerns. Jigger stated that:

> "Should this investigation result in no prosecution due to this attempt at wishing problems away, the integrity of the Administration, the Department of Justice, the Organized Crime Section, the Cleveland Strike Force, and the personnel participating in this investigation will be unfairly tarnished."

Richard Crino, Area Administrator, LMSA, noted another important and immediate fallout of closing this Presser probe. This involves the use of informants. Crino commented that since the integrity of the government would be publicly questioned by many, he doubted that many informants would consider it worthwhile to come forward with information on Presser or any other high-ranking Teamster or labor official. Such valued sources would, cynically or not, feel that it would be unproductive to give information to the government in light of what happened in the Presser case.

This concern over the negative impact upon labor-management intelligence collection was voiced by almost all of the Labor Department personnel interviewed.

4) Impact Upon the Labor Movement

Another potential cost of the government's handling of the Presser case concerns its impact upon the rank and file members of the labor movement. The extent to which the declination of the Presser indictment will affect their desires and ability to clean up their own unions is unquantifiable.

In an unsolicited letter from the Teamsters for a Democratic Union (TDU), we received an expression of this concern. Jim Wardell, a member of the TDU Steering Committee stated:

> We are proud to be Teamsters standing up for democracy.... Now the United States Department of Justice has sent a very important and clear message to every one of the 1.6 million Teamster members. This message reads: "If you stand up against organized crime in your union, do so at your risk. You will not find an ally in the Justice Department. We do not intend to move against Mr. Presser, even when the evidence of serious crimes stares us in the face. You, the members of the Teamsters Union, can take care of yourselves as best you can. But don't call us. And you can be sure...we won't call you!"
>
> And this, we feel, is the most important impact of the Justice Department's action. For rank and file union members are the best ally of those who want to rid the labor movement of criminal influence. Look around at unions with criminal elements in important positions. Numerous and lengthy investigations and even indictments and convictions have limited impact....
>
> That democratic revitalization is what the Teamsters Union needs most of all. And yet the Justice Department has just signalled very clearly where this stands on the priority list of the top law enforcement officials in the country.

Although impossible to quantify, this last expression of the union rank and file may be describing the most significant cost of the aborted Presser investigation.

IV. THE SUBCOMMITTEE'S ACCESS TO INFORMATION

Much of the information gathered by PSI staff during the Presser investigation has come from federal law enforcement agencies.[41] The Department of Labor, in particular its Office of Inspector General, has generally provided complete access to files and personnel. The Department of Treasury has done the same through its Bureau of Alcohol, Tobacco, and Firearms, and the Department has also provided tax-related documents to PSI pursuant to a Senate Resolution. Cooperation by the Department of Justice's Criminal Division has been generally good, although staff has not had access to all of the documents requested. Cooperation by the Federal Bureau of Investigation has been completely unsatisfactory.

A. COOPERATION BY DOJ

The Department of Justice's Criminal Division has for the most part been very cooperative during this investigation. It has made all requested personnel available for extended interviews, and although the refusal to reveal information which may lead to the identity of an informant has been maintained, the Criminal Division has interpreted this principle much less stringently than the FBI, thus allowing extended discussion of the authorization issue (without discussing actual informant relationships).

The Criminal Division has also searched its files on the ghostworkers case as well as previous investigations involving Presser, William Presser, and the Teamsters Union, and has made those files available, subject to excisions based upon the informant principle, Rule 6(e) concerning the non-disclosure of grand jury information, and Title III wiretap information.

The most glaring example of DOJ non-cooperation is its failure to issue instructions to the FBI, which is under the aegis and jurisdiction of DOJ. FBI Director William Webster did personally discuss this matter with Senators Roth and Nunn on two occasions. However, despite several letters and meetings between Subcommittee and FBI representatives, the FBI has refused, for the most part, to cooperate with PSI's investigation.

Senators Roth and Nunn wrote to the FBI on July 25, 1985 requesting a briefing by the responsible FBI officials on the Presser investigation, interviews of individuals charged with responsibility for the Presser investigation, and access to the case file on Mr. Presser and the investigation. The Senators sent another letter on October 22, 1985 requesting specific documents related to other investigations relevant to the Subcommittee's probe. The Subcommittee's Chief Counsels met with FBI representatives on numerous occasions and reiterated PSI's requests for access to FBI documents and personnel. During these meetings, the FBI gave assurances that cooperation would be forthcoming. In response to a suggestion from the FBI, the Chief Counsels wrote a letter on February 6, 1986, again requesting interviews with certain FBI personnel.

These efforts and the FBI's assurances of cooperation largely remain unfulfilled. Moreover, certain representations made to the Chief Counsels by the FBI have proved untrue. For example, the FBI stated some time ago that the Subcommittee would soon receive a number of files, after the Justice Department reviewed them. However, it appears that a list of the requested documents was only recently sent to the Department's Office of Professional Responsibility for review. To date, the Subcommittee has received only those FBI files related to the Nardi bribe incident, and after a protracted period, a copy of the FBI's internal informant guidelines, most of which has already been made public through responses to FOIA requests. Moreover, even before the grand jury was empanelled in Cleveland, the FBI denied the staff access to field personnel, and has maintained this denial even for agents who are not targets of the pending grand jury investigation.

The FBI's refusal to cooperate during the Subcommittee's investigation stands in stark contrast to that of other components of the Department of Justice and other executive branch agencies, and extends to the denial of information on precisely the same issues on which the other entities have provided files and permitted interviews. The staff can perceive no legitimate reason for the FBI to adopt a different approach toward complying with PSI's information requests than the Justice Department (of which it is a part), particularly in view of the FBI's considerable involvement in the matters under scrutiny.

FOOTNOTES

1/ Harold Friedman and Allen Friedman are not related. However, Allen Friedman was raised by his sister, Faye Presser (wife of William Presser). Within Local 507, Jackie Presser has held the position of Secretary-Treasurer, and Harold Friedman has been President.

2/ According to statements made by Allen Friedman to Department of Labor investigators, Presser was trying to push him out of the operation of Local 507, resulting in the formation of a separate union.

3/ Hughes had previously, in 1971, been placed on the payroll of Bakery Workers Union Local 19 as a business agent. See fn. 5, infra.

4/ Also included on the original list of possible ghosts was John J. (Skippy) Felice Jr., Gary Presser (Jackie Presser's son), and David Friedman (Harold Friedman's son). The practice of hiring ghostworkers is generally regarded as illegal as a misuse of union funds under 29 U.S.C. 501. See United States v. Bane, 583 F.2d 832 (6th Circuit 1978).

5/ Bakery Workers Local 19 (Local 19 of the Bakery, Confectionary, and Tobacco Workers International Union) was included, and continued to play a significant role in the Local 507 investigation, due to its close ties with Local 507. Bakery Workers Local 19, and Teamsters Local 507 are both located at 1870 East 19th Street, Cleveland, Ohio, a two story building with one public entrance for both unions. Once inside, there is no delineation between the two unions. Business Agents carry business cards which are printed with the Teamster logo on one side and the Bakery and Confectionary workers logo on the reverse. The two unions are completely integrated from top to bottom. Harold Friedman is the President of both Locals and clerical employees draw pay from both Locals.

6/ The prosecution memorandum recommended indictments against the three individuals for violations of 18 U.S.C. 1962 (RICO violation), 29 U.S.C. 501 (c) (embezzlement of union funds), 29 U.S.C. 439 (making a false labor report), and 18 U.S.C. 1027 (false statement on ERISA documents).

7/ In its interim report on labor racketeering, released January 14, 1986, the President's Commission on Organized Crime specifically criticized the Administration for its contacts with Presser.

8/ In the Department of Justice, PSI staff did not interview officials above the level of Assistant Attorney General, Criminal Division. In the Department of Labor, PSI staff did not interview officials above the level of the Inspector General. The staff was not permitted to interview any FBI personnel involved in the case.

9/ DOL OIG files do contain several memos concerning information received from confidential informants that Presser had been telling associates that he would not be prosecuted because he had "friends" in the government but there is no evidence that any such "friends" made any effort to influence the investigation.

10/ The only files which PSI has received from the FBI thus far are those pertaining to the Nardi bribe incident, and a copy of the FBI's internal guidelines for informants (which was obtained on January 27, 1986 after repeated requests by PSI). Since the beginning of this investigation specific requests to interview current and retired FBI agents have been denied by the FBI. Michael Shaheen of DOJ's Office of Professional Responsibility also recently requested that PSI not contact FBI personnel while grand juries were pending.

11/ Cleveland Strike Force prosecutors disagreed with the headquarters decision to drop Hughes and Friedman as defendants. The Strike Force proposed a solution to potential discovery problems and submitted that the ends of justice required the disclosure of an informant's identity in this particular case. The Strike Force prosecutors also disagreed with OCR's interpretation of the facts surrounding the alleged Argie authorization.

12/ Martin McCann retired from the FBI and now works in private industry in Cleveland. Patrick Foran currently serves as Assistant Special Agent in Charge of the FBI office in Las Vegas, and Robert Frederick is still with the Cleveland FBI office.

13/ The agents reportedly signed written statements based upon these interviews. PSI has not obtained copies of these statements.

14/ Nardi has claimed, in statements to DOL OIG investigators and a sworn PSI deposition, that he was never offered any work assignments by Jackie Presser. Nardi stated that he was placed on the Local 507 payroll following a meeting with Presser in 1972 and that when he (Nardi) asked what he would be doing, Presser told him that he would contact him and let him know. But according to Nardi, Presser never contacted him until 1978, when he told him that he was being taken off the payroll. According to the deposition transcript:

> Q. There did come a time, as we understand it, in 1972, when you were placed on the payroll of Local 507 in Cleveland?
> A. Correct.
> Q. How did this come about?
> A. My father called me and told me to meet him and that we were going over -- well, I orginally was supposed to go to work for the Joint Council 41 for Bill Presser.
> Q. What is your father's name?
> A. John Nardi. He called me and said that the things had changed and I was going to go to work for Jackie Presser, so we subsequently went over to Mr. Presser's office, Jackie Presser.
> Q. This was you and your father?
> A. Right, and he told me that I was going to be on salary for $300 a week, and that right now he didn't have anything for me to do, but he would call me when I should come down and start work.
> Q. This was Jackie Presser?
> A. Right.
> Q. Said this to you? Did he tell you what your title was?
> A. Business agent.
> Q. Did he tell you what your responsibilities would be?
> A. No, he said he would go over that at a later date when he decided what he was going to have me do.
> Q. Did you have any conversations with Harold Friedman at that time?
> A. No, just Jackie Presser.
> Q. Any conversations with Bill Presser?
> A. No.
> Q. Did you have any understanding that you would be performing work for Council 41?
> A. I anticipated and wanted to go to work for either one of them, really, for 507 or for Joint Council 41. That's the reason I went back to Ohio from California, was to get involved in the labor movement.
> Q. Did anyone ever call you and ask you to perform any work?
> A. No one ever called.
> Q. Did you ever ask anyone why no work was assigned to you?
> A. I just asked my father once or twice, and he said that when he wanted me, he would call me, Jackie Presser would call me, which he never called.
> Q. Did you receive money from Local 507?

A. Yes, I did, $300 a week.
Q. What was the arrangement for payment?
A. He mailed it to me.
Q. A check?
A. He mailed a check, yes.
Q. Who signed the checks?
A. Jackie Presser and Harold Friedman.
Q. In what amounts?
A. The amounts?
Q. Yes.
A. It was always the same, $300, less the deductions.
Q. How often did you receive a check?
A. Every week.
Q. And about how much was the total amount of money you received from Local 507 during the time you were on the payroll?
A. According to the records, it's one hundred and some thousand dollars.
Q. During the time you were on the payroll at Local 507, did you engage in any other employment?
A. Yes.
Q. What was that in?
A. Numerous employment, car leasing; electrical -- an electrician; basically those were the two.
Q. Did you earn some money from these other jobs?
A. Yes, sir.
Q. During this period of time, were you in contact with anyone associated with the union, either Joint Council 41 or Local 507?
A. No, the only person I ever had any contact with was my father.

15/ Allen Friedman was subpoenaed by PSI to appear for a deposition, and Friedman informed PSI that he would invoke his 5th Amendment privilege. No efforts were made to secure an immunity order after Justice Department officials informally indicated that the Department would likely object to an immunity order. Friedman reportedly told DOL OIG agents that following his recuperation from his 1976 heart attack, he tried to go back to work but Presser and Harold Friedman told him to stay out of the union hall. Friedman reportedly said that he was allowed to use the union xerox machine and telephone occasionally but he did no work.

16/ Allen Friedman was released from prison following a hearing on a motion for a new trial. The Department of Justice conceded that if a new trial were to be granted, they would not be able to turn over relevant information to Friedman and his attorneys without exposing federal informant(s). John Nardi, Jr.'s dismissal arose in the context of a sentencing hearing.

17/ The OCR Section was informed of the Argie situation in November 1983, after the Cleveland Strike Force made a request to immunize Argie. On June 27-28, 1984, Paul Coffey reviewed the FBI files pertaining to this situation. Coffey said he saw items in the file which made him want to speak to the FBI agents. When asked why the files were not reviewed until June, 1984, Coffey told PSI staff that OCR wanted the Cleveland Strike Force to complete its investigation and submit its prosecutive memorandum before OCR would look into the Argie matter further. Further, the Strike Force was not informed of the Argie situation until much later in order to avoid "tainting" its investigation.

18/ A DOJ official related this information to PSI staff but refused to disclose further details for fear of revealing information which might disclose the identity of an informant. He stated that he concurred in the agents' judgment concerning this authorization, believing it was an appropriate, if not unavoidable, response to a specific event.

19/ In January, 1986, FBI headquarters personnel informed PSI staff that according to Cleveland SAC Joseph Griffin, his office never misled the

Cleveland Strike Force. PSI staff has not been permitted to interview Griffin.

20/ According to Cleveland Strike Force attorneys Olah and Jigger, in a 1985 memorandum submitted to OCR, "The exclusion of local labor personnel from information on the status of their case has resulted in their demoralization and the virtual loss of all Strike Force credibility. Explanations to top level labor officials will do nothing to assuage the hostility and resentment of people who have devoted countless hours on a case, only to be told 'you are not entitled to know.'"

21/ John Climaco, Presser's attorney, has written several letters to the Department of Justice and Department of Labor complaining about media leaks and their prejudicial effect on his client. DOJ initiated an internal investigation of leaks, which was closed without any formal action being taken. Leaks have continued following DOJ's decision not to prosecute in July, 1985.

22/ Magee also memorialized matters in a file memo, which stated, "My discussion with Coffey did not disclose any reason for the FBI's actions except for some speculation which both Coffey and I exchanged, having to do with FBI interest in Presser, personalities in the Cleveland FBI office, and FBI-OIG operational tensions -- concerning which further elaboration in this paper is neither necessary nor appropriate."

23/ John Joyce was formerly Police Chief for Beechwood, Ohio.

24/ Rapisarda provided a sworn deposition to PSI staff in November, 1985. He adamantly denied having any knowledge of Nardi's intentions, stating that he was only asked to set up a meeting between Nardi and Joyce (not Presser), and that he attempted to do so because he saw Joyce every weekend at a Cleveland health club. The information indicating Rapisarda's knowledge of Nardi's intentions comes from interviews with Nardi and Joyce (by FBI and DOL OIG), and depositions taken by PSI in November, 1985.

25/According to Joyce's PSI deposition:

A. All right. To the best of my recollection, now that you've refreshed my memory, I did see Sam Rapasarda at Elsner's. Under what circumstance or if I was getting a steam or he was or I could have been in front having breakfast or whatever. I believe -- you know, I would like to refresh my memory. I don't want to say something that is not true...
Okay. And I'm trying to recollect these things.

Q. Sure, we understand, and I'm not --

A. This was an insane time. You have no idea how crazy this was.

Q. Why was it a crazy --

A. Because I didn't know what was going on at that point. I was in the dark. I didn't know that Sam Rapasarda and Jack Nardi even knew each other. To the best of my recollection he said, "Hi" or something to that effect that he -- Jack Nardi, I believe he stated, would like to talk to me, or would I meet Jack Nardi or something of this. And again, without refreshing -- from your notes I might know --

Q. Well, let me tell you -- understand, we're not trying to trap you or --

A. No, I understand. And I'm trying --

Q. I'm trying to get your best recollection now, and maybe some things would help refresh your recollection.

A. All right, sir.

Q. Did he tell you at the club that his guy, Joyce's guy, your guy, that is, Jackie Presser -- somebody wanted to talk to your guy? Do you remember that?

A. Yes.

Q. And that this somebody was Jack Nardi, who wanted to talk to your guy.

A. All right.

Q. And that you said that you'd meet him later at the Amy Joy Donut Shop in Mayfield --

A. In Lynhurst.

Q. Richmond Road.

A. In Lynhurst, Ohio.

Q. And talk about it.

A. All right. That I do recall. But that was the next day.

Q. That was the next day?

A. Yes, sir. That I met him.

Q. And you did in fact meet with him?

A. Yes, sir, I did.

Q. At the Amy Joy Donut Shop?

A. Yeah, I had a couple of donuts there. Every time I eat donuts there I get violently ill. We did meet.

Q. Okay. And what did he say and what did you say at that time?

A. To the best of my recollection again, sir, I believe he stated that Nardi wanted to meet my guy, or however it was so stated -- Presser. And I said I didn't know if that was possible. I believe at that time Jackie Presser was out of town. Okay. And I really don't know if the situation or his stating was that -- or that he'd meet with me because he trusted me or would Presser be interested in paying him some money to change his testimony. I really can't recall the exact words. The sequence --

26/ According to Joyce's PSI deposition:

Q. Now, what did you do after that meeting at the Amy Joy Donut Coffee Shop?

A. All right. The next morning, and again, as best as I can recollect -- there's a day or something, I'm sorry. We met again in the presence of John Climaco and Jackie Presser. In Mr. Presser's office at Local 507 on East 19th Street.

Q. The three of you were there? Or was Tony Hughes also there?

A. I can't recall.

Q. All right.

A. And this was discussed, this whole scenario from whence this first came up to the present time. There was a great amount of confusion, you know, why? What's happening? Why pick on you? Just like I say.

Q. Why pick on you, meaning Joyce?

A. Right. To be this contact.

Q. Did you discuss the possibility that this was a sting?

A. That is correct. That is correct. And at that point Presser screamed and said, "No way. You might be endangering yourself. We don't know what the hell is going on. He's a liar." He being Nardi. "He's a punk."

Q. Can't be trusted?

A. No. I don't know if in fact that was stated, but I mean, he really blew his stack.

Q. Well, if he says he's a liar.

A. Well, all right. Fine. And Climaco at that point said, "Jesus, I can't advise you. You might be going into something and who the hell knows." And I told him at that point -- and we discussed at that point two or three different options that I in fact would have.

Q. What were the options?

A. The options quite simply were that I would approach the FBI, okay? And Climaco, if I remember correctly, wasn't -- you know, that was something that I don't think had gone through his head at this point. I would wire myself. Or we'd say "The hell with it." You know, do nothing.

Q. Wire yourself and meet with Jack Nardi?

A. That is correct. I wanted to -- at that point, I thought that I was -- to this day, I really don't know. But I thought I was involved in something that might have gotten rolled and couldn't be stopped at this point. I knew if in fact this thing went down it would be a help to Presser.

Q. If what thing went down?

A. I mean, if in fact he really had a discussion with me or attempted to solicit this bribe.

Q. Or if he changed his testimony?

A. Whatever. Whatever he had to say. Here was a guy offering something and, you know, I felt -- and again, because as we all know from my background and experience that, you know, one way or another -- I mean, I wasn't too enthusiastic about trying to do this myself, but if need be I would do it myself, and both Climaco and Presser were not too enthusiastic about that.

Q. What were the problems with you doing it by yourself?

A. Well, you know, my safety.

Q. Well, were you afraid of Jack Nardi?

A. I'm not afraid of Jack Nardi. No. But he wanted me to come to Florida, okay?

Q. Yes.

A. He wanted to meet me at a yacht club. I can't even remember the name. A marina.

Q. A place you'd never been to before?

A. Hell, no. I didn't know what I was getting into. And I just didn't know.

Q. Well, did you have any further discussions after that discussion with anyone about what you should do?

A. No, sir. At that point what simply we did was that I -- I didn't meet with him -- stating again, before I went to see Joe Griffin, I called Marty McCann. Okay?

Q. When would that be?

A. That was the same morning and I called him in Presser's office.

Q. That was pursuant to an agreement that you all agreed, you and Climaco and Presser, about what you should do?

A. That I should go to the FBI.

Q. Get in touch with the FBI?

A. That is correct, sir.

Q. And you called Marty McCann. Where did you reach him?

A. At his office.

Q. And what did you say?

A. I said, "Martin, I want to go forward with this -- "

Q. Did you explain the situation?

A. I explained the situation with him, and I said, "Can you get ahold of Joe?" Joe Griffin. And he said, I believe he said, "All right. Call me back in ten minutes." Or fifteen minutes.

Q. Why did you decide to call Marty McCann?

A. Because I felt that that would be in my best interests. He was a good friend of mine. He was an ex FBI agent. He's an intelligent individual.

Q. Did you ask his advice about what you should do?

A. I had asked his advice. I had solicited his advice. I explained to him. And he said, "This is a problem."

Q. Did you tell him that you were concerned about a sting being run on you?

A. I believe I did.

Q. And what did he say about that?

A. "Anything was possible."

Q. Because of the Labor Department --

A. I have no idea. I don't want to say something, you know. I don't know.

Q. You can't remember if he said that or --

A. I can't remember if he said that, sir.

Q. Okay. I don't want you to put words in his mouth.

A. No. That's what I'm attempting not to do, sir.

Q. All right. But I'm trying to get as complete an understanding of this conversation --

A. And I'm trying to give it my best shot.

Q. All right. But I'm trying to get as complete an understanding of this conversation --

A. And I'm trying to give it my best shot.
Q. All right. But you did explain to Marty McCann that you had been approached by Rapasarda?
A. That's correct, sir.
Q. And you told him what he said?
A. That's correct.
Q. And you said that you were concerned about a sting being run on you?
A. I said, "I'm concerned about a sting. What the hell, why me, Martin?" You know, several --
Q. And what did he advise you to do?
A. He advised me to go to the FBI. To the best of my knowledge, if I can remember that. And, you know, I said, "I don't know." We didn't know who these players were.
Q. And how did you know? That is my next question. How did you know that the FBI, if there was a sting involved, wasn't behind this thing?
A. I was taking a hell of a chance. Well, I didn't know who else to go to.
Q. Yeah.
A. I knew or I thought I knew at least that from what I had read, from what I had heard, that the FBI, up until that point, had not taken an active interest in this whole investigation. I had never heard or read that FBI agents were interviewing or anything else. It had always been these two guys jumping around, doing whatever they were doing.
Q. So you thought there was probably less of a chance the FBI would be behind this?
A. I certainly hoped that there was somebody who was going to stay in my corner.
Q. All right. After you talked to Marty McCann, what did you do next?
A. I waited and I believe either he called me or I called him, I don't know the time proximity. It could have been a half hour. And he said, you know, "Go up and see Joe." Joe Griffin.

27/ According to DOL OIG files, the FBI agents first said that they would not be able to fly to Florida on an FBI plane. Then they said that they were unable to get a commercial flight due to the holiday (Christmas) rush. Finally, they said that there wasn't enough money in the FBI budget to pay for overtime to send agents to Florida to arrest Nardi. The OIG agents have expressed skepticism at these claims and in fact told PSI staff that they were able to secure commercial flight reservations without any problems.

28/ The FBI furnished PSI with two versions of the Nardi interview. Another Strike Force prosecutor working on the ghostworkers investigation, Steve Canfil, recalled receiving a call from the FBI asking if he wanted the 302 Report changed to remove comments concerning the misconduct of the OIG agents. Canfil said he told the FBI that he did not want any changes to be made.

29/ According to an internal DOL memorandum, Thomas and Simmons denied making any promises to Nardi regarding his state charges. The memorandum states that Thomas said specifically that they would have no authority to do so and Simmons said that the "standard conversation" took place, telling Nardi that if he "cooperated" that would be made known to the Strike Force and to the State District Attorney.

30/ The Nardi incident was examined by the grand jury in Cleveland and several witnesses, including Joyce and Rapisarda, appeared before this grand jury. No other prosecutions were forthcoming, although the Strike Force was at one time considering a perjury prosecution against one of the grand jury witnesses.

31/ In contrast, John Climaco claimed, in a May, 1983 letter to the DOL Solicitor, that it was DOL OIG agents Simmons and Thomas who set up the bribe incident with Nardi in an attempt to entrap Presser.

32/ On December 22, 1982, in the midst of the Nardi bribe incident, Nick Nardi executed a sworn affidavit at John Climaco's request. The affidavit states that John Nardi, Jr. was supposed to be working for Joint Council 41 (even through he was on Local 507's payroll) but he was not performing up to expectation and was refusing to follow supervision and therefore had to be fired. John Nardi, Jr. stated during his deposition that this information is completely false. John Climaco delivered this affidavit to DOJ prosecutors in June, 1984. Earlier in 1982, Nick Nardi had reportedly told DOL OIG investigators that he had no idea what his nephew was doing for the union, and that he had never seen his nephew around Local 507 or Joint Council 41.

33/ Although not required by the Levi guidelines, the internal policies of the FBI appear to imply that such determinations should be clearly recorded by the case agent handling the informant. The August 12, 1977 airtel from the Director states:

> Whether an Agent learned of or should have learned of the misconduct of an informant is a question which can result in the handling Agent's actions being challenged long after the fact. This aspect of the operation of informants places great demand on our integrity and professionalism. It also confirms the necessity of accurate records regarding the development and operation of informants, particularly regarding assignments to informants.

Inexplicably, this guidance from the Director is not memorialized in a requirement for written documentation in subsequent changes to the MIOG in response to the Levi guidelines.

34/ The U.S. Attorney at the time of the ghostworkers investigation, William Petro, resigned in 1984 and was subsequently convicted for leaking secret grand jury information. It should be noted that Petro was a former law partner of John Climaco, Jackie Presser's counsel. Staff investigators have learned that Petro also leaked information concerning the Friedman indictment to defense attorney(s) involved in the Presser investigation.

35/ It is difficult to understand such an attitude on the part of Supervisory Agents such as McCann, Frederick and Foran since they were responsible for organized crime labor racketeering cases in the Cleveland FBI office. This is particularly true in light of the fact, as Strike Force Attorney Stephen Jigger pointed out in a January, 1985 memorandum, that the Sixth Circuit Court of Appeals has upheld convictions under 29 U.S.C. 501(c) in cases where money was expended for work although work was never done since 1962. (See U. S. v. Decker, 304 F2d 702, 703 (6th Cir. 1962)).

36/ Margolis and Coffey did not tell the Strike Force attorneys about the specifics of the "informant problem" or anything about the Argie authorization until April 1985. They explained to PSI staff that they did not want to "taint" the Strike Force attorneys before their investigation was completed. No explanation was given how this information could have "tainted" the Strike Force attorneys and the staff is unsure how it could do so.

37/ The Strike Force attorneys provided PSI staff with several reasons why they found the agents' stories to be not credible, including the agents failure to speak up before Allen Friedman's conviction, the absence of authorization entries in FBI files, and inconsistencies among the agents during their interviews.

38/ The length of the ghostworkers investigation has been criticized by DOL OIG personnel as another example of poor DOJ supervision over the case. Maria told the staff that the Jackie Presser investigation was clearly one of the most significant cases within the Department of Labor's inventory of investigations, basing his conclusion upon the amount of funds alleged

to have been embezzled as well as the notoriety of the potential defendants. As such, Maria stated that the Inspector General's Office of the Department of Labor had allocated a significant amount of staff and budgetary resources commensurate with the case's importance. Maria, along with his Deputies, all raised their concern that the Department of Justice did not, in turn, allocate appropriate resources on their part through the Cleveland Strike Force.
Both Organized Crime and Racketeering Section Chief David Margolis and his Deputy, Paul Coffey, confirmed that the Presser investigation was one of the most important investigations that the Department of Justice was handling during this time. However, both felt that there was no problem with delays and they were pleased with the way the case proceeded (until June, 1985).

39/ A review of the Labor Department records also indicates that Steve Jigger had made a specific request of the FBI for 302's that they had concerning Harry Haler. In a December 3, 1981 memo, Jigger noted that the request had not been honored.

40/ The comment by Olah in the August 25, 1982 issue of the Plain Dealer was: "My interest has been aroused by the (Plain Dealer) articles; I am interested in the allegations...."

41/ Senators Roth and Nunn sent letters to the four key agencies (DOJ, FBI, DOL, and Treasury) requesting access to relevant files and personnel access almost immediately after learning that Presser would not be prosecuted.

Appendix

The following individuals have played a significant role in one or more of the Presser investigations reviewed by the Subcommittee. Those interviewed or deposed by the Subcommittee staff are indicated by an asterisk behind their name.

Department of Justice

William French Smith	Former Attorney General (Attorney General when the ghostworker case was opened.)
Edwin Meese	Current Attorney General (Attorney General when the ghostworkers case was closed.)
Stephen Trott *	Assistant Attorney General, Criminal Division
John Keeney *	Deputy Assistant Attorney General, Criminal Division
David Margolis *	Chief, Organized Crime & Racketeering Section (Former Chief of the Cleveland Strike Force)
Paul Coffey *	Deputy Chief, Organized Crime & Racketeering Section
Steven Olah *	Chief, Cleveland Strike Force
Stephen Jigger *	Cleveland Strike Force Attorney
Steve Canfil *	Former Cleveland Strike Force Attorney (Now with Cuyahoga County Prosecutors Office, Cleveland, Ohio)

Department of Labor

Brian Hyland	Inspector General
Robert Magee *	Former Acting Inspector General (Retired)
Raymond Maria *	Deputy Inspector General
Stuart Eder *	Director for Operations, Office of Labor Racketeering (Former LMSA Agent in Cleveland, Ohio)
David Williams *	Director for Investigations, Office of Labor Racketeering (Former Agent-In-Charge, Cleveland, Ohio)
Don Wheeler *	Agent-In-Charge, Cleveland, Ohio
James Thomas *	Former Office of Inspector General (OIG) Agent (Now with the Defense Criminal Investigative Service)
George Simmons *	Former Office of Inspector General (OIG) Agent (Now with the Defense Criminal Investigative Service)
Richard Crino *	Area Administrator, Labor Management Services Administrations (LMSA) (Cleveland, Ohio)

Federal Bureau of Investigation

William H. Webster	Director
Oliver B. Revell	Assistant Director, Criminal Investigative Division
James Moody	Unit Chief, Labor Racketeering Unit
Joseph Griffin	Special Agent In Charge (SAC), Cleveland, Ohio
Roy McKinnon	Former Special Agent In Charge (SAC)(Retired)
Robert Frederick	Supervisor, Organized Crime Squad, Cleveland, Ohio
Patrick Foran	Assistant Special Agent in Charge, Las Vegas, Nevada (Former Supervisor, Organized Crime Squad, Cleveland)
Martin McCann	Former Supervisor, Organized Crime Squad, Cleveland (Retired)
Fred Fehl	Former Supervisor, Organized Crime Squad, Cleveland
Richard Lind	Supervisor, Labor Racketeering Squad, Cleveland
Nelson Gordon	Special Agent, Labor Squad, Cleveland
Jay White	Special Agent, Labor Squad, Cleveland
Don Adams	Former Special Agent, Akron, Ohio Resident Agency (Retired)

Department of the Treasury

Steven Wells *	Supervisor, Bureau of Alcohol, Tobacco & Firearms Cleveland, Ohio

Teamsters Union

Jackie Presser	International President, International Brotherhood of Teamsters (IBT) Secretary-Treasurer, Local Union 507, IBT
Harold Friedman	President, Local Union 507, IBT President, Local Union 19, Bakery, Confectionery & Tobacco Workers International Union, AFL-CIO
Anthony "Tony" Hughes	Recording Secretary, Local Union 507 Business Agent, Local Union 19
Allen Friedman	Former Business Agent, Local Union 507 (Uncle of Jackie Presser)
George "GiGi" Argie	Former Business Agent, Local Union 507
John "Jack" Nardi,Jr.*	Former Business Agent, Local Union 507 (Son of slain mob leader, John Nardi, Sr.)
John Joyce *	National Housing Director, Local Union 416, IBT (Former Chief of Police, Beckwood, Ohio)
Nicholas Nardi *	Secretary-Treasurer, Local Union 416, IBT (Uncle of Jack Nardi, Jr.)
John Climaco *	General Counsel, IBT, and personal counsel for Jackie Presser

Others

Sam Rapisarda *	Insurance Agent (Involved in alleged aborted Nardi extortion of Jackie Presser)
David Hopcraft	Former Managing Editor, Cleveland Plain Dealer (Now employed with Cuyahoga County Commissioner's Office; Was involved in Margolis letter announcing the closing of Hoover-Gorin case.)
Tom Lanci	Former employee of Hoover-Gorin (Convicted of RICO/Murder and Bribery;Now Released)
Anthony Liberatore	Former Capo, Cleveland LCN Family Former President, Laborers Union Cleveland (Convicted and currently incarcerated for RICO/Murder and Bribery)

APPENDIX II

U.S. Department of Labor
Office of the Solicitor
Washington, D.C. 20210

APR - 1 1985

MEMORANDUM FOR STEPHEN S. TROTT
Assistant Attorney General
Criminal Division
U.S. Department of Justice

FROM : FRANCIS X. LILLY

SUBJECT: Labor Racketeering Amendments to the Comprehensive Crime Control Act of 1984

Attached is a copy of an internal draft, dated March 22, 1985, of a memorandum intended to provide guidance on the interpretation of the phrase "other related Federal laws" as used in section 506(b) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1145 (1982), as recently amended by section 805(b) of Public Law 98-473. We would very much appreciate the benefit of the views of the Department of Justice on this subject before we provide formal guidance on it to interested offices within the Department of Labor.

If we may further your efforts in this regard, please let us know. In light of the importance of this matter, we would appreciate receiving the views of the Department of Justice by April 15, 1985. Thank you in advance for your anticipated/cooperation and assistance.

Attachment

SLD:DFELDMAN:ACU:3/29/85:2845

DRAFT
MAR 22 1985

SUBJECT: Labor Racketeering Amendments to the Comprehensive Crime Control Act of 1984

This is in response to your request for an interpretation of language in the Labor Racketeering Amendments which were recently enacted and signed by the President as part of the Continuing Resolution (Public Law 98-473). Section 805(b) amends the Employee Retirement Income Security Act of 1974 by adding a new section 506(b) which reads, in pertinent part, as follows:

> (b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS--
> The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code.

The question arises as to the intent of the Congress concerning the scope of the term "other related Federal laws."

The reference to "this title" in the subsection is to Title I of ERISA which, among other things, sets out the reporting and disclosure requirements, minimum standards for participation, vesting, and funding, and the fiduciary responsibility provisions. A very narrow interpretation of the investigative authority, racketeering language could limit the Secretary's authority in this regard only to criminal violations of ERISA-type statutes, that is those relating to employee benefit plans.

However, our review does not point out evidence that the Congress intended such a limited interpretation. Statements on S. 1785 of the 97th Congress and S. 336 of the 98th Congress, the predecessors of the language enacted in the Continuing Resolution, by Senators Nunn and Rudman, the chief sponsors of the bill, and those of Senators Hatch and Nickles, the Chairman of the full Labor Committee and the Labor Subcommittee, respectively, indicate that it was their intent that the Secretary investigate corruption in labor unions as well as pension, health, and other types of employee benefit plans. The following is a sampling of those statements, portions of which have been highlighted for emphasis.

"Finally, the bill clearly delineates the responsibility of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities relating to union or employee benefit plan corruption. This provision is directly responsive to the many witnesses who during our hearings testified that the Department of Labor had consistently over a long period of time failed to act against labor racketeering on the waterfront and elsewhere."

Senator Rudman before the Subcommittee
on Labor, February 3, 1982.

"Section 5 of the bill makes it clear that the Secretary of Labor has not only the authority but also the responsibility for the detection, investigation and referral of alleged civil and criminal violations of the relevant portions of ERISA and other federal statutes. . . Finally, the term "other related federal statutes" is meant to include, but not be limited to, statutes relating to theft from embezzlement from or bribery to influence the operation of an employee benefit plan."

Report of the Senate Committee on
Labor and Human Resources to accompany
S. 1785, No. 97-497, page 15.

"As for the waterfront, several things quickly became obvious . . . (T)hird, that the Department of Labor has generally failed to participate in criminal law enforcement efforts in this area. To correct this problem and to maximize available law enforcement resources in this area, S. 1785 clearly delineates the responsibilities and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities on the waterfront."

Statement of Senator Nunn during
the Senate debate on S. 1785, July 28,
1983, Congressional Record,
page S 9315.

". . . the bill would clearly delineate the responsibility of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities in unions."

Statement of Senator Rudman in introducing S. 336, February 1, 1983, Congressional Record, page S 805, and before the Senate Committee on Labor, Hearing on S. 336, March 15, 1983, page 61.

"Sixth, S. 366 makes it clear that the Department of Labor has not only the authority, but also the responsibility for detection, investigation, and referral of civil and criminal violations of the appropriate Federal labor laws to the Department of Justice.

"This is perhaps in my opinion, the most important provision in S. 336. Unless the Department of Labor is committed to the principles of this legislation and to ridding the labor movement of organized crime and other criminal elements, our efforts today to strengthen these three statutes (Taft-Hartley, LMRDA, ERISA) may prove fruitless.

"S. 336 makes clear that it is the intent of Congress that the Department of Labor enforce these statutes aggressively . . . S. 336 provides the Department. . . the statutory basis and authority it needs to effectuate the purpose of this legislation--the elimination of corruption and criminal elements from the field of labor management relations. That is the goal of what we are trying to do today."

Statement of Senator Hatch during debate on
S. 1785, June 20, 1983, Congressional
Record, Page S 8727.

Further, although these Senators usually spoke in general terms, and usually spoke about their greatest concern, the corruption of benefit plans, Senator Nunn, however, often referred to the hearings of the Senate Subcommittee Permanent Subcommittee on Investigations on corruption on the waterfront citing union officials who had been charged with a variety of offenses ranging from violations of the Taft-Hartley Act to extortion, payoffs, kickbacks, threats, intimidation, obstruction of justice, and income tax evasion. In introducing S. 336, he reiterated:

> ". . .to maximize available law enforcement resources in this area, the bill clearly delineates the responsibility and authority of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activity on the waterfront."
>
> Congressional Record, February 2, 1982, page S 803.

This was repeated in the report of the Permanent Subcommittee on Investigations entitled "Waterfront Corruption" issued on March 27, 1984 (No. 98-369). The report, in recommending enactment of S. 336, stated, "The legislation clearly delineates the responsibility of the Department of Labor to seek actively and effectively to detect, investigate and properly refer to prosecutors instances of waterfront crime." (at page 10).

The statements of these Senators, who were major participants in the enactment of the racketeering statute, point to the conclusion that the Department's criminal investigative authority was not intended to be limited to ERISA and other benefit plan related statutes even though it was included in only the ERISA title. Rather, it is strongly arguable that the "other related Federal statutes" language was intended to encompass statutes relating to corruption and crime in the labor movement in general. We are not aware of contrary statements by Senators or Congressmen which are part of the legislative history. The fact that the drafters did not provide a specific list of statutes subject to this investigative authority can be read as an indication of Congressional intent that the Department should have appropriate flexibility to investigate violations of crimes which are "related" but due to inadvertence might be omitted from such a list.

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 21 1985

Mr. Francis X. Lilly
Solicitor of Labor
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Dear Mr. Lilly:

This is a response to your memorandum of April 1, 1985, which requested this office's views concerning the scope of the Labor Department's criminal investigative authority pursuant to Section 805(b) of the Comprehensive Crime Control Act of 1984 and a draft memorandum prepared by the Department of Labor on that subject. In our opinion the draft memorandum construes the scope of the Labor Department's investigative responsibility under Section 805 too broadly when it concludes that the phrase "other related Federal laws" extends Labor Department authority to the conduct of criminal investigations beyond those involving employee pension and welfare benefit plans subject to Title I of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. §§1001-1144).

Although our review of the legislative history leads us to conclude that the statutory provision may have extended the Labor Department's investigative authority to federal offenses other than the three (3) misdemeanors (29 U.S.C. §§1111, 1131, and 1141) within Title I of ERISA and the three (3) felonies (18 U.S.C. §§664, 1027, and 1954) whose jurisdictional elements depend on the presence of benefit plans subject to Title I of ERISA, we do not believe that the statute authorizes Labor Department agents to conduct investigations of internal labor union affairs and labor-management relations independently from the Department's authority to do so pursuant to Section 601 (29 U.S.C. §521) of the Labor Management Reporting and Disclosure of Act of 1959 (LMRDA) and the 1960 memorandum of understanding between the Departments of Justice and Labor concerning investigations under the LMRDA. In our opinion the view expressed by the draft memorandum is undercut both by the statutory provision's placement in and reference to Title I of ERISA, which does not relate in any material way to internal labor union affairs or labor-management relations, and by legislative history which indicates that the amendment of ERISA was directed specifically at testimony by former Labor Secretary Marshall and others associated with the Labor Department's investigation of the Teamsters Central States Pension Fund.

By its express terms Section 805 of the 1984 Act amends Section 506 (29 U.S.C. §1136) in Title I of ERISA by conferring on the Secretary of Labor, concurrently with "other appropriate Federal agencies" the "responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code." Indeed the Senate Labor Committee Report on the provision which was ultimately incorporated into the labor racketeering amendments of the Comprehensive Crime Control Act clearly states with reference to the subject matter of 18 U.S.C. §§664 and 1954, respectively, that "the term 'other related federal statutes' [sic] is meant to include, but not be limited to, statutes relating to theft from[,] embezzlement from or bribery to influence the operation of an employee benefit plan." S. Rep. No. 98-83 on S.336, 98th Cong., 1st Sess. (1983) 16.

Moreover, in hearings on earlier versions of the amendment which contained identical language, the primary sponsors of the legislation discussed the purposes of the proposed amendment of 29 U.S.C. §1136 in the context of the purported failure by the Labor Department to conduct additional criminal investigation relating to the Teamster Central States Pension Fund. Hearing before the Senate Subcommittee on Labor on S.1785, 97th Cong., 2d Sess. (Feb. 3, 1982) at 36-38 (colloquy of Senators Hatch, Nickles, and Nunn). A few months before those hearings, an oversight report issued by the Senate Permanent Subcommittee on Investigations (PSI) had criticized testimony by Secretary Marshall and former Solicitor of Labor Carin Claus who had argued in 1980 that the Labor Department had not conducted additional criminal inquiries as part of the Central States investigation because it lacked affirmative authority to detect and investigate Title 18 crimes related to the operation of employee benefit plans and that its criminal investigative responsibility was limited to the reporting and disclosure requirements under ERISA. S. Rep. No. 97-177, "Oversight Inquiry of the Department of Labor's

Investigation of the Teamsters Central States Pension Fund," Report of the Senate Permanent Subcommittee on Investigations, 97th Cong., 1st Sess. (Aug. 3, 1981) 6, 93-95, 185-187. The latter report had focused its criticism on the Labor Department's position in 1980 that evidence of benefit plan embezzlement or kickbacks would not be pursued directly by the Central States investigative team, but would be referred to the Inspector General's Office for investigation and/or referral as part of the Inspector General's participation in the Organized Crime Strike Force program. "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Hearings before the Senate Permanent Subcommittee on Investigations, 96th Cong., 2d Sess. (Sept. 30, 1980) 495-506. The PSI report had therefore recommended that

> Congress pass legislation directing the Labor Department to initiate and investigate all violations of Federal law relating to employee welfare benefit trust funds [and] . . . that Congress include in the legislation language making it unarguably clear that the Labor Department is to work in close harmony with the Department of Justice in investigating violations of Federal law relating to employee welfare benefit trust funds.

S. Rep. 97-177, supra, at 186.

The foregoing analysis is not meant to detract from other independent authority which the Labor Department has to investigate crimes arising from internal union affairs and labor-management relations. As you are aware, former Secretary of Labor Mitchell delegated part of the latter authority to the Justice Department in 1960 pursuant to a memorandum of understanding between the two Departments. See enclosure. The 1960 memorandum allocates to the Justice Department and the Federal Bureau of Investigation the primary investigative responsibility over four (4) LMRDA offenses relating to internal labor union affairs [29 U.S.C. §§501(c) (theft), 503(b) (employer payment of fines), 504 (prohibited employment), and 530 (deprivation of rights by violence] and two (2) LMRDA provisions relating to crimes dealing with labor-management relations, namely, extortionate picketing (29 U.S.C. §522) and the 1959 amendment of Section 302 of the Taft-Hartley Act (29 U.S.C. §186) which involves prohibited employer payments to labor union officials. The primary responsibility for investigating the remaining six (6) LMRDA offenses [29 U.S.C. §§439 (reporting), 461, 463 (trusteeships), 502 (bonding), 503(a) (prohibited loans) and

503(b) (union payment of fines)] is allocated to the Labor Department. However, the 1960 memorandum further provides that this allocation of investigative responsibility is "subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis." 1960 Memorandum of Understanding, p. 2.

Accordingly, Labor Department agents have continued to conduct investigations of internal union affairs with respect to all of the pertinent LMRDA crimes by means of specific "delegation" arrangements undertaken by the investigators and Justice Department prosecutors in individual cases. In our view United States Attorneys and Organized Crime Strike Force Chiefs have properly entered into these arrangements under the authority granted to them by the Attorney General in the 1960 memorandum. With the exception of the Taft-Hartley Act offenses, */ this procedure merely gives back to the Labor Department that law enforcement authority which Congress had originally conferred on it in Section 601 of the LMRDA (29 U.S.C. 521) while at the same time giving Justice Department prosecutors a meaningful voice into the appropriate allocation of law enforcement resources within their respective judicial districts.

With respect to crimes of violence arising from labor-management relations, Justice Department officials have reason to be concerned about the Labor Department's initiation of investigations without the participation of other federal investigative agencies whose experience and law enforcement functions the Labor Department investigators might seek to supplement, if not duplicate, if the views expressed in the draft memorandum were translated into practice. Aside from the extortionate picketing statute in the LMRDA, which addresses a very narrow and non-violent form of extortion already covered by the Hobbs Act (18 U.S.C. §1951), Congress has not clearly stated its intention, in our view, that the Labor Department ought to regulate labor-management relations by means of unilaterally conducting investigations into violation of such statutes as 18 U.S.C. §§844(i) (destruction of property used in interstate commerce by explosives or arson), 1951 (robbery and extortion affecting

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*/ Expressly excluded from the Secretary of Labor's investigative authority under the LMRDA is the power to investigate "amendments made by this Act to other statutes." LMRDA Sec. 601(a); Pub. L. 86-257; 73 Stat. 519, 538 (1959).

interstate commerce), 1952 (interstate travel or use of interstate facilities to further extortion, bribery, or arson), 1952A (interstate travel or use of interstate facilities to commit murder-for-hire), 1952B (violent crimes promoted by enterprises engaged in arson, robbery, bribery, extortion, etc.), and other federal crimes of general application which have been or are being used to deal with violence arising in the context of labor-management relations.

Although the draft memorandum cites the 1984 Senate report on Waterfront Corruption as a basis for the Congressional view that S.336 authorized the Department of Labor "to seek actively and effectively to detect, investigate, and properly refer to prosecutors instances of waterfront crime," the specific crimes being discussed in that report appear to have been the crimes amended by the bill, namely, 29 U.S.C. §§504 (prohibited service in unions and corporations and prohibited employment as labor-relations consultants), 1111 (prohibited employment in pension and welfare plans and as employee benefit plan consultants), and 186 (prohibited employer payments to labor officials). S. Rep. No. 98-369 on Waterfront Corruption, Senate Permanent Subcommittee on Investigations, 98th Cong., 2d Sess. (1984) 9-10. These particular crimes were already being investigated by Labor Department agents on case-by-case arrangements pursuant to the 1960 and 1975 memoranda of understanding. As Senator Nunn stated about the amendment of 29 U.S.C. §1136: "This bill is not really a departure from what I read in the existing law, but it is a strong emphasis that we want the law to be followed." Hearing on S.1785 (Feb. 3, 1982), supra at 38.

Moreover, as we have commented in other contexts, the strengths which the Justice Department has sought and will continue to seek from Labor Department investigators lie primarily in the agents' ability to deal with documentary evidence associated with white-collar crime investigations, to understand the workings of the labor movement and its component organizations, and to develop sources of information within those organizations. We value highly the expertise and experience which agents bring from the program responsibilities of the Labor Department to cases involving internal labor union affairs, employee benefit plans, and labor-management relations. On the other hand, we do not believe that the Labor Department's goal properly should be the duplication of the investigative role played by the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, and Firearms.

Accordingly, in view of the foregoing analysis we believe that Labor Department agents are currently authorized by the LMRDA and the 1960 memorandum of understanding to investigate specific federal crimes related to the conduct of internal labor union affairs and specific non-violent crimes related to labor-management relations. In our opinion Labor Department agents are also authorized by 29 U.S.C. §1136, as amended, to investigate criminal violations of Title I of ERISA and other federal laws related to the operation of employee pension and welfare benefit plans. With respect to the all other federal crimes, and especially those involving the violent conduct of labor-management relations or violence generally, we respectfully suggest that the Department of Labor continue to follow its longstanding practice of diligently making known evidence of such crimes to the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, or other appropriate federal agencies which are expressly authorized to investigate such matters.

Sincerely,

Stephen S. Trott
Assistant Attorney General
Criminal Division

Enclosure

By: John C. Keeney
John C. Keeney
Acting Assistant Attorney General
Pursuant to 28 C.F.R. §0.132 -

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND LABOR RELATING TO THE INVESTIGATION AND PROSECUTION OF CRIMES AND CIVIL ENFORCEMENT ACTIONS UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (P.L. 86-257)

Whereas, the Labor-Management Reporting and Disclosure Act of 1959 (P.L. 86-257, 73 Stat. 519) imposes certain duties and responsibilities upon the Attorney General and Secretary of Labor with regard to prosecution of crimes arising under the Act and civil enforcement actions under the Act; and

Whereas, that Act, in section 601, imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated, or are about to violate, any provision of the Act (except Title I, or amendments made by this Act to other statutes); and

Whereas, that Act, in section 607 provides that the Secretary of Labor may make interagency agreements which may help to avoid unnecessary expense and duplication of functions among Government agencies and ensure cooperation and mutual assistance in the performance of functions under the Act; and

Whereas, it is desirable and essential that the areas of responsibility and the procedure in connection with the investigations, prosecutions of offenses and civil enforcement actions arising under the Act should be the subject of formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

1. Criminal Prosecutions - All cases involving violation of the criminal provisions of the Act will be prosecuted by the Department of

Justice. Those cases investigated by the Department of Labor, hereinafter detailed, will be referred to the Criminal Division, Department of Justice as provided in Section 607.

2. Investigations of Matters made Criminal by the Act

Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigation under the Act will be conducted as follows:

(a) The Department of Labor will through its own staff investigate those criminal matters arising under:

1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).

2. Title III (Trusteeship).

3. Section 502 (Bonding) of Title V.

4. Section 503 (a) Making of loans by labor organizations to officers and employees of the labor organization) of Title V.

5. That part of Section 503 (b) of Title V which relates to the payment of a fine of a labor official or employee by a labor union.

(b) The Department of Justice will, under delegation from the Secretary of Labor, investigate those criminal matters arising under:

1. Section 501 (c) (Embezzlement of union funds) of Title V.

2. That part of Section 503 (b) of Title V which refers to a payment of a fine of a labor official or employee by an employer.

3. Section 504 (Prohibition against certain persons from holding office) of Title V.

4. Section 505 (Containing an amendment to Section 302, Labor Management Relations Act of 1947, as amended) of Title V.

5. Section 602 (extortionate picketing) of Title VI.

6. Section 610 (deprivation of rights by force and violence) of Title VI.

3. Notification - Whenever either Department learns or is informed of any matter coming within the investigative jurisdiction of the other Department, as set forth above, it will notify such other Department in writing and furnish all information in its possession regarding the matter.

4. Exercise of Other Functions - Exercise of delegated investigative authority by the Department of Justice pursuant to this agreement shall not preclude the Department of Labor from making inquiries for the purpose of administrative action related to the crime being investigated. Nothing in this Memorandum of Understanding shall be construed to affect the investigative jurisdiction of the Department of Justice under other statutes.

5. Prosecution of Civil Enforcement Actions - Any violations of the Act which form the basis for civil enforcement actions will be investigated by the Department of Labor. Whenever the Department of Labor concludes that a civil enforcement action should be instituted, it will refer the case to the Department of Justice, with the request that suit be instituted on behalf of the Secretary of Labor, and will furnish the Department of Justice with all pertinent information in the possession of the Department of Labor. Upon receipt of such request, the Department of Justice will institute and will conduct the civil enforcement action on behalf of the

Secretary of Labor. The Department of Justice will not institute any civil enforcement action under the Act except upon the request of the Department of Labor, nor will the Department of Justice voluntarily dismiss any action so instituted except with the concurrence of the Department of Labor. The Department of Justice will dismiss any action so instituted upon the request of the Department of Labor. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of the Department of Labor in the preparation and, to the extent feasible, in the presertation of such actions in court.

6. Parole Board Proceedings - The investigation and presentation of issues concerning the appropriateness of a grant of a certificate under section 504(a) to an individual by the Board of Parole will be the responsibility of the Department of Labor, including appearances before the Board of Parole.

7. Instructions - So that the terms of understanding will be effectively performed both Departments will issue instructions for the guidance of its officers, such instructions to be submitted for comment prior to their issuance to the other Department.

8. Periodic reviews of this agreement will be made to determine any adjustments which seem necessary based on experience under this Act.

Approved:

S/ William P. Rogers William P. Rogers Attorney General	S/ James P. Mitchell James P. Mitchell Secretary of Labor
Date: Feb. 16, 1960	Date: Feb. 16, 1960

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SENATE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS
Washington, DC 20510

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ALBERT GORE, JR., TENNESSEE
DANIEL F. RINZEL, CHIEF COUNSEL
ELEANORE J. HILL, CHIEF COUNSEL TO THE MINORITY

November 18, 1985

The Honorable Edwin Meese III
Attorney General of the United States
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

We understand that the Department of Justice and the Department of Labor are currently reviewing the scope of the Labor Department's criminal investigative authority pursuant to Section 805(b) of the Comprehensive Crime Control Act of 1984. Section 805(b) was originally introduced by Senator Nunn and Senator Rudman on May 12, 1981 as part of the Labor-Management Racketeering Act. The bill was drafted as a result of hearings on Waterfront Corruption before the Senate Permanent Subcommittee on Investigations, which were chaired by Senator Nunn.

We have had the opportunity to review the Department of Justice's most recent discussion of the meaning of Section 805(b) (letter of Stephen S. Trott, Assistant Attorney General to Francis X. Lilly, Solicitor of Labor, attached). Having done so, we are greatly concerned that the Department of Justice has seriously misinterpreted both the scope of the statutory provision as well as the legislative history leading to its enactment. As the original and longstanding cosponsors of this legislation, we feel compelled to clarify the record as to Congressional intent in drafting and introducing Section 805(b).

That provision was drafted in response to testimony in the waterfront corruption hearings on the failure of the Labor Department to investigate organized criminal activity and corruption in the field of labor-management relations. Contrary to the restrictive meaning given the section by Mr. Trott, our intent in enacting Section 805(b) was to clearly authorize and encourage an aggressive investigative effort by the Labor Department against corruption and criminal activity in all areas of labor-management relations including, but not limited to, both union and employee benefit plan activity.

Specifically, we direct your attention to the following points:

1. Section 805(b) authorizes broad Labor Department criminal investigative authority and is not limited strictly to offenses involving the misuse of employee benefit plans, as Mr. Trott suggests. The reference to "civil and criminal violations related to this title" in Section 805(b) refers to title 29 offenses and not simply title 1 of ERISA, as Mr. Trott concludes. This should be clear from the statutory language, given the subsequent contrasting reference to title 18 in the same sentence.

2. In defining Labor Department investigative authority to include violations of "other related Federal laws", we intended that the latter phrase be construed broadly, so as to encompass any Federal criminal violations which may relate to the field of labor-management relations, such as extortion, bribery, and the award of sweetheart contracts. We did not intend that the meaning of the phrase be limited to non-violent, pension fund offenses, as Mr. Trott has erroneously suggested. Section 805(b) specifically authorizes Labor Department investigations of title 18 offenses, many of which may involve violence, so long as the particular offense relates to the field of labor-management relations. In drafting this provision, we intended to expand, rather than restrict, and to encourage, rather than hamper, the Labor Department's investigation of all types of criminal activity in the labor-management field.

3. Section 805(b) was not "directed specifically" at the Subcommittee's hearings on the Labor Department's Investigation of the Central States Pension Fund, as Mr. Trott concludes in finding that the section speaks only to employee benefit plan activity. As we mentioned previously, this section, as well as the entire Labor-Management Racketeering Act, was a direct outgrowth of the February 1981 Waterfront Corruption hearings. Those hearings, through the testimony of, among others, Justice Department prosecutors, underscored the need for active participation by the Labor Department in investigating the entire spectrum of criminal activity related to unions.

4. Section 805(b) was not intended to divest the Labor Department of responsibility for the investigation of criminal offenses which may involve violence. To the contrary, we intended that the provision clearly approve an aggressive role by the Labor Department in the investigation of organized crime's efforts to influence and control labor-management relations. The record in the Waterfront Corruption hearings is replete with instances of organized crime's infiltration in union affairs, oftentimes encompassing violent or potentially violent offenses. We have on many occasions spoken of the need for increased Labor Department participation in law enforcement's efforts against organized crime and labor racketeering. Given the overwhelming legislative record on which Section 805(b) is founded, we do not understand how one could interpret this provision as restricting the Labor Department to the investigation of purely non-violent offenses.

5. The grant of investigative authority in Section 805(b) was in no way intended to condone, approve or adopt the division of investigative authority set forth in the 1960 and 1975 Memoranda of Understanding between the Labor Department and the Justice Department. To the contrary, the Labor Department was apparently operating pursuant to those agreements when, according to evidence in hearings before the Permanent Subcommittee on Investigations, it failed to aggressively pursue allegations of criminal activity in both the Central States and waterfront investigations. Section 805(b) is not intended to merely codify the terms of the MOUs, but rather to give the Labor Department full and active investigative authority in the enforcement effort against labor racketeering.

In closing, we are hopeful that the Justice Department will respect the intent of Congress, as outlined above, in implementing Section 805(b) of the Comprehensive Crime Control Act of 1984. We worked extensively on this legislation for nearly four years prior to final passage, including the drafting process, the full committee proceedings, its presentment to the Senate, and the final conference negotiations. Based on that experience, we are confident that we have correctly stated Congressional intent in enacting this most important piece of legislation.

It is our belief that Section 805(b), if properly implemented, will make a substantial and positive contribution to the fight against organized crime and labor racketeering. We look forward to the continuing cooperation of the Justice Department in our efforts to strengthen and improve Federal law enforcement efforts in this area.

Sincerely,

Sam Nunn

Warren B Rudman
Warren B. Rudman

Lawton Chiles
Lawton Chiles

Don Nickles
Don Nickles

Orrin Hatch
Orrin G. Hatch

Bill Roth
William V. Roth, Jr.

U.S. Department of Labor

Solicitor of Labor
Washington D.C. 20210

DEC 3 1985

Mr. Stephen S. Trott
Assistant Attorney General
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Trott:

This is in response to John J. Keeney's letter of June 21 concerning the scope of the Department of Labor's criminal investigatory authority pursuant to section 805(b), which is part of the Labor Racketeering Amendments included in the Comprehensive Crime Control Act of 1984.

On April 1, I had provided you with a copy of an internal draft, dated March 22, 1985, of a memorandum intended to provide guidance on the meaning of section 506(b) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132 (1982), as amended. In light of pertinent legislative history, the internal draft had construed section 506(b) of ERISA (which was added to ERISA pursuant to section 805(b) of the Crime Control Act) as granting the Secretary of Labor the authority to investigate corruption in labor unions, as well as employee benefit plans.

In response to the internal draft, the June 21 letter indicated that, while section 506(b) of ERISA may enlarge the Department of Labor's authority to investigate federal offenses that involve employee benefit plans subject to Title I of ERISA, section 506(b) does not confer authority on the Department of Labor to conduct investigations relating to internal labor union affairs and labor-management relations beyond the authority already granted to the Department of Labor by section 601 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 521 (1982), and the 1960 memorandum of understanding between the Departments of Justice and Labor.

After receiving the June 21 letter, I directed further staff consideration of relevant principles of statutory construction, as well as the legislative history of section 805(b) of the Crime Control Act, in an effort to promote a mutually satisfactory approach in this area. The further consideration to date supports the view, expressed in the internal memorandum, that section 805(b) of the Crime Control Act and its attendant legislative history indicate Congress' intention to give the Department of Labor authority to detect, investigate, and refer for prosecution crimes related to labor law enforcement (including labor racketeering laws).

In construing the language and application of a statute, it is appropriate to consider relevant information about the historical background of the enactment of the statute. The problem at which the statute was aimed and the object it was supposed to achieve must be examined. See United States v. Evans, 333 U.S. 483 (1948). The legislative intention is most clearly gleaned from the explanatory statements by the sponsors of the bill. United States v. United Mine Workers of America, 330 U.S. 258 (1947).

The Labor Racketeering Amendments responded to hearings on the problems of separate agencies conducting and coordinating investigations of organized crime and labor-management racketeering. The June 21 letter focused on one part of the legislative history, specifically, the testimony of former Secretary of Labor F. Ray Marshall and others at hearings in September 1980 before the Senate Permanent Subcommittee on Investigations. These hearings followed allegations that the Department of Labor failed to pursue criminal violations of ERISA growing out of the investigations of the Teamsters' Central States Pension and Health and Welfare Funds. The June 21 letter notes the criticism of the Department of Labor at the Central States hearings for taking the position that the Department's criminal investigatory authority was limited to the reporting and disclosure requirements of ERISA.

The legislative history of the Labor Racketeering Amendments is not limited, however, to this one set of hearings. The issue of the Department of Labor's involvement in criminal investigations goes back as far as 1978 when Attorney General Benjamin R. Civiletti testified before PSI and stated a limited, though differing, view of the Department of Labor's criminal investigatory authority. In stating the Department of Justice's dissatisfaction with an initial decision of the Department of Labor to pursue organized crime under ERISA through civil suits, which only incidentally might lead to criminal prosecutions, Attorney General Civiletti said:

> It was our position that ERISA did not reach organized criminal activity except insofar as it was involved in manipulating pension funds. Such practices as embezzlements from union treasuries, sweetheart contracts, extortion or bribery for labor peace were not reachable under ERISA. Moreover, we did not believe that civil suits alone were an effective tool with which to pursue entrenched professional criminals.

Hearings before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, April 24 and 25, 1978, entitled "Labor Management Racketeering," at page 18. The entire legislative history of the Labor Racketeering Amendments, however, suggests that Congress intended section 805(b) to correct the separate, narrow interpretations each of our departments gave to the Department of Labor's criminal investigatory role.

The hearings on ERISA enforcement activities relating to the Teamsters' Central States Funds referred to in the June 21 letter followed the April 1978 hearings at which Attorney General Civiletti testified. The Department of Labor was criticized at the Central States hearings for not pursuing criminal prosecutions under ERISA, but this fact does not imply that Senator Nunn and the other sponsors of the racketeering legislation intended the Department of Labor's responsibilities to be limited to ERISA in the fashion espoused by Attorney General Civiletti.

Other PSI hearings relating to labor corruption on the waterfront followed the Central States hearings. In the course of the waterfront hearings, the subcommittee found that ports were riddled with kickbacks, illegal payoffs to union officials, and other crimes such as those delineated by Attorney General Civiletti in his 1978 testimony. The report following these hearings recommended enactment of the Labor Racketeering Amendments, stating, "The legislation clearly delineates the responsibility of the Department of Labor to seek acti vely and effectively to detect, investigate, and properly refer to prosecutors instances of waterfront crime."

Report of the Permanent Subcommitee on Investigations of the Committee on Governmental Affairs, United States Senate, entitled "Waterfront Corruption," March 27, 1984, at page 10.

The statement in the June 21 letter that the Labor Racketeering Amendments were "directed specifically at testimony by former Secretary Marshall" at the Central States hearings is inconsistent with the clear and unequivocal statement of Senator Nunn, a chief sponsor of the Labor Racketeering Amendments: "*The origin of that legislation was not an investigation of the Teamsters Union but rather an investigation of the waterfront.*" Hearing before the Committee on Labor and Human Resources, United States Senate, entitled, "Oversight of the Teamsters' Union, 1983," June 7, 1983, at page 6 (emphasis added). Less than two weeks later, Senator Nunn was more specific in addressing the investigatory authority language directly during the Senate floor debate. He said, "*The bill clearly delineates the responsibility of the Department of Labor to actively and effectively investigate and refer for prosecution criminal activities on the waterfront.*" *Congressional Record*, June 20, 1983, page S 8729 (emphasis added).

These excerpts from the legislative history reveal that Congress was not concerned solely about the Department of Labor's investigation of the Teamsters' Central States Pension Fund. Rather, the statements support the position articulated in the internal draft that Congress intended the Department of Labor to exercise criminal investigatory authority with respect to labor organizations and employers beyond the limited realm of employee benefit plans. This construction of congressional intent is consistent with the views recently expressed by six sponsors of the Labor Racketeering Amendments in a November 18 letter to the Attorney General.

As noted in the June 21 letter, pursuant to a 1960 memorandum of understanding, the Department of Labor agreed to delegate to the Department of Justice and the Federal Bureau of Investigation primary investigative responsibility over certain LMRDA offenses and section 302 of the Taft-Hartley Act, 29 U.S.C. § 186 (1982). The memorandum of understanding also provided, on a case-by-case basis, for a different allocation of investigative responsibility between the two agencies upon agreement of the parties. In enacting the Labor Racketeering

Amendments, Congress was fully aware of the 1960 memorandum of understanding (and also the 1975 memorandum relating to ERISA) concerning criminal investigations. Yet, in reading the legislative history, there can be no question that the Department of Labor was being told by Congress that it was not doing enough in the criminal investigatory area.

The Labor Racketeering Amendments suggest Congress' conviction that the Department of Labor, with its current resources and personnel, is now in an excellent position to uncover a broad range of criminal activities. Therefore, a careful review by both of our Departments of the entire range of investigative and enforcement activities seems appropriate at this time. We are confident that the respective agencies would be able to coordinate effectively, recognizing the responsibilities of Department of Justice prosecutors to provide overall guidance to those investigating potential cases.

The June 21 letter states that the Department of Justice views the Department of Labor's investigator's primary functions as "deal[ing] with documentary evidence associated with white-collar crime investigations, . . . understand[ing] the workings of the labor movement and its component organization, and . . . develop[ing] sources of information within those organizations." As previously stated, the research we have completed suggests that Congress intends for the Department of Labor to function in a more expansive capacity than that envisioned by the June 21 letter. Appropriate interdepartmental coordination could assure that performance by the Department of Labor of its criminal investigatory responsibilities would not duplicate the work of the FBI or the Bureau of Alcohol, Tobacco, and Firearms.

It also is my understanding that officials of the Department of Justice previously have taken the position that there should be no Department of Labor involvement in investigations where there is any potential for violence. Even in the context of the functions the Department of Labor's investigators are performing now, they are confronted with situations and individuals where the potential for violence is great.

These agents must have the ability to carry out their responsibilities effectively. In this regard, both PSI and the Senate Committee on Labor and Human Resources have taken extensive testimony on life-threatening situations that the Department's labor racketeering investigators too frequently face in the course of their investigations, as well as on instances in which the agents were unable to investigate obvious criminal activity due to the lack of necessary law enforcement tools, which only could be obtained by specific delegation from the Department of Justice. Therefore, it also would be helpful at this time for us to address the issue of affording independent law enforcement authority to the Department of Labor's investigators.

In conclusion, I hope it will be possible for interested officials of our respective departments to meet at the earliest practicable time to discuss and resolve these matters, and my office will be communicating with yours in the near future to discuss arrangements for our meeting.

Sincerely,

Frank Lilly

Francis X. Lilly

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 30 '86

JAN 22 1986

Honorable Sam Nunn
United States Senate
Washington, D.C. 20510

Dear Senator Nunn:

This is a response to a letter addressed to the Attorney General dated November 18, 1985, which you signed with five other Senators who co-sponsored in the last Congress legislation which became Section 805(b) of the Comprehensive Crime Control Act of 1984. Your letter expressed disagreement with certain conclusions stated by this office in a letter to the Solicitor of Labor dated June 21, 1985. Our letter to the Solicitor concerned the scope of the Labor Department's criminal investigative authority under Section 805(b) which amended Section 506 of title I of the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1136).

We understand your letter to express the view that the reference in Section 805 to "civil and criminal violations related to the provisions of this title" refers to all civil violations and criminal offenses contained in Title 29 of the United States Code rather than violations and offenses related to the operation of employee welfare and pension benefit plans which are regulated under title I of ERISA. We also understand your letter to express the view that the phrase in Section 805 "other related Federal laws, including . . . related violations of title 18 of the United States Code" refers to all Federal criminal offenses which relate to "corruption and criminal activity in all areas of labor-management relations, including but not limited to, both union and employee benefit plan activity" as well as "all types of criminal activity in the labor-management field," which would include such crimes as "extortion, bribery and the award of sweetheart contracts."

SENATE PERMANENT
SUBCOMM. ON INVESTIGATIONS
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MINORITY OFFICE

Therefore we understand that the phrase "other related Federal laws" is not confined, in your view, to any Federal crime which might pertain in a particular case to the operation of an employee pension or welfare benefit plan. Rather, you appear to view the phrase as also authorizing the investigation of any Federal violation which might relate to internal labor union affairs or the conduct of labor-management relations between employers and representatives of employees whether or not regulatory authority is elsewhere conferred on the Labor Department under any other pertinent Federal law such as the National Labor Relations Act of 1935, the Labor Management Relations Act of 1947 (Taft-Hartley), the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), and the Railway Labor Act as amended in 1934 and 1936. Indeed, your letter speaks to the need for active participation by the Labor Department in investigating "the entire spectrum of criminal activity related to unions."

Although our letter to the Solicitor of Labor expressed the view that Labor Department investigators have the authority under prior legislation and interdepartmental arrangements to investigate crimes related to abuses of internal union affairs of the kind proscribed in the LMRDA and corrupt payments in labor-management disputes as prohibited by the Taft-Hartley Act, we questioned in effect whether the statutory phrase "civil and criminal violations of . . . other related Federal laws" was sufficient to confer on the Labor Department new areas of regulatory authority, especially in the area of relations between management and employee representatives, an area primarily regulated by the Federal government through the National Labor Relations Board. We did not intend to assert that the Labor Department has no authority to investigate crimes of violence; certain crimes in the LMRDA and ERISA are predicated in whole or in part on the actual or threatened use of force. Nor did we intend to imply that crimes investigated by the Labor Department never result in the detection of violent conduct. Investigation of certain corrupt employer payments in violation of the Taft-Hartley Act can and do result in concomitant prosecution for extortion in violation of 18 U.S.C. 1951. Where no other investigative agency with firearms and arrest powers is available to conduct the hazardous portions of labor racketeering investigations involving organized crime, this office has recommended that criminal investigators in the Inspector General's Office of Labor Racketeering within the Department of Labor be deputized as special deputy United States Marshals.

We were not aware that anyone had questioned the legal authority of Labor Department investigators to investigate internal union affairs or prohibited employer payments in particular labor racketeering cases. However, because we were aware of the specific analysis of Section 805(b) in Senate Report 98-83, 98th Cong., 1st Sess. (1983) and that analysis' apparent focus on former Labor Secretary Marshall's doubts expressed in Senate hearings as to the Labor Department's authority to investigate crimes involving benefit plans where the offenses are outside title I of ERISA, and especially the three felonies in title 18 of the United States Code whose jurisdictional elements are predicated on title I of ERISA, we concluded that the clear import of Section 805(b) as an amendment contained in title I of ERISA was to encourage and authorize additional investigative efforts by the Labor Department with respect to employee benefit plans and to resolve those doubts expressed by Secretary Marshall. In light of the contrary views expressed in your letter, however, we have requested the Office of Legal Counsel of the Department of Justice to review both the legislative background of Section 805(b) and the effect of the legislation on the criminal law enforcement authority of other Federal agencies in the area of internal labor union affairs, the operation of employee benefit plans, and labor-management disputes.

As indicated in our letter to the Solicitor of Labor, we are especially concerned about the allocation of investigative resources and the proper coordination of law enforcement effort in the area of labor-management disputes where substantial violence can erupt in the absence of corrupt practices involving internal union affairs, prohibited employer payments, or other activities which are subject to Labor Department scrutiny as part of its civil regulatory responsibilities. While the expertise and experience which Labor Department investigators bring to their work from the Department's regulatory program responsibilities is a sound basis for requiring the Labor Department's affirmative presence in the investigation of labor racketeering, the more appropriate course of action in a particular case involving extensive violence may be to primarily draw upon the investigative strengths of another law enforcement agency or agencies whose resources, experience, or area of specialization can more adequately address the investigative problems at hand. Accordingly, you may be assured that in connection with requests for investigation under all Federal laws which may pertain to criminal activity in the labor-management field this office will consider the views expressed in your letter while at the same time giving due regard to the proper coordination of investigative effort in this important area of the Federal criminal law.

Sincerely,

Stephen S. Trott
Assistant Attorney General
Criminal Division

By: John C. Keeney
John C. Keeney
Deputy Assistant Attorney General
Criminal Division